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United States Notes

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6

UNITED STATES NOTES

A HISTORY OF THE VARIOUS ISSUES OF PAPER MONEY BY THE GOVERNMENT OF THE UNITED STATES

BY

JOHN JAY KNOX

LATE COMPTROLLER OF THE CURRENCY

WITH AN APPENDIX CONTAINING THE RECENT DECISION OF THE SUPREME COURT OF THE UNITED STATES AND THE DISSENTING OPINION UPON THE LEGAL TENDER QUESTION

SECOND EDITION REVISED

NEW YORK
CHARLES SCRIBNER'S SONS
1885

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Prof. Frank W. Taussig,
Cambridge

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PREFACE.

In the course of his official career the author has had occasion to deal with subjects kindred to those presented in this volume. From time to time, he has collected material with the hope of publishing at some future day a volume worthy of the title of "History of Banking in the United States." The results of these investigations have appeared from time to time, in official reports, occasional addresses, and in articles contributed to various encyclopædias. The present volume is published in accordance with the request of many friends, who believe that at the present time a small volume containing a history of all the various issues of paper money by the Government will be useful and interesting to the public.

The recent decision of the United States Supreme Court has virtually placed it in the power of Congress to issue United States legal tender notes in any amount, at any time it may be deemed politic or advisable. A

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connected history of the paper money issued by the Government will enable the reader to trace the gradual rise and development of a doctrine which has at length been endorsed by so much weight of authority.

At the date of the adoption of the Constitution, the issue of paper money in any form was popularly regarded with aversion. The experience of the colonists with bills of credit, as paper money was then called, had been fraught with loss and political disturbance, and the experience with the like issues by the Continental Congress had so affected the minds of the wisest and best men of that time, that in the Federal Convention the general feeling was one of almost bitter opposition to granting the power to emit bills of credit to the new Government. No one can examine the records of those days without being thoroughly impressed that the sense of the Convention was in favor of an absolute prohibition. Further proof may be found in the fact that from 1791 to 1812, a period of twenty-one years, the method of raising funds for the Government by the issue of bills of credit was not even suggested; nor indeed were circulating notes, in form payable on demand without interest, issued at all, until more than seventy years after the adoption of the Constitution.

The charter of the first Bank of the United States expired in 1811, and the Federalists were not strong enough to secure a recharter. When the war of 1812

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broke out, the necessity of funds was so imperative, that the Administration and Congress felt themselves forced, the one to recommend, and the other to authorize, the issue of interest-bearing Treasury notes. They were regarded as a measure of necessity. Loans in the ordinary form had failed, and these notes were regarded as a convenient form of loan. They were not intended to circulate as money; they were fundable into public stock, and, as a matter of fact, were retired as soon as possible after the close of the war. These issues were, however, a fatal precedent out of which has grown a latitude of constitutional construction not then anticipated.

From 1815 to 1837, a period of twenty-two years, there was no resort to this remedy for the relief of the Government finances. In 1836, the charter of the second Bank of the United States expired, and again party spirit prevented a recharter. Soon after came the financial disasters of 1837, and again the Administration recommended, and Congress authorized, the issue of interest-bearing Treasury notes as forms of short loans. These issues extended from 1837 to 1844, and during that period the views of many, as to the constitutionality of their use, considerably expanded. The discussions in Congress, and the executive documents of that day, show how severe was the struggle between the strict constructionists and those who

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were in favor of a view of the Constitution giving wider powers to Congress.

During the Mexican war, 1846–1847, the plea of necessity secured congressional authority for another issue of interest-bearing Treasury notes. The financial panic of 1857 again caused Congress to consider such notes as the only remedy for the existing distress.

It remained for the Civil war, however, to bring such pressure that all remaining constitutional scruples were swept away. Until 1862 no notes had been issued with the legal-tender quality. All propositions to make Government paper a legal tender had been rejected almost with contempt by Congress. In 1862, however, the first Legal-tender Act was passed, and for the first time, notes having the quality of legal tender, and intended to circulate as money, were issued by the United States Treasury. These notes were at first fundable in United States bonds, and had not this provision been afterward repealed by Congress, they would, like previous issues of Treasury notes, have soon disappeared from circulation. By this repeal they were made a permanent circulation. Then came the decision of the United States Supreme Court, reversing a former decision and making them a legal tender for all debts—for those contracted before the passage of the Legal-tender Act as well as for those contracted after that date. This decision, however,

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based the constitutionality of legal-tender notes upon the war powers of Congress. This still left open the question whether such notes issued in time of peace were constitutional, and the Supreme Court has now settled that, under the Constitution, Congress has power, if it deems it expedient, to issue legal-tender money to any amount, either in time of peace or war.

The chapter upon the distribution of the surplus money of the United States is, it is believed, the first complete history of that subject. It serves to illustrate the subject of United States notes. The crisis of 1837, which at that time was deemed sufficient cause for the issue of the latter, can be readily traced to the withdrawal of the surplus from the banks to distribute it among the States.

The late decision of the Supreme Court on the legal-tender question, and the dissenting opinion, on account of their importance, are given in an Appendix.

A considerable portion of the material in the present volume was contained in the third volume of the "Cyclopædia of Political Science and Political Economy," recently published by M. B. Cary & Co., of Chicago; and by their courtesy, and with their consent, it is given to the public in this convenient form.

In addition to the authorities quoted, the following have been consulted: American State Papers; Annals of Congress; Madison Papers; Elliot's Debates; Con-

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gressional Globe; Bolles' Financial History of the United States; National Loans of the United States, by R. A. Bayley; Annual Cyclopædia; Hunt's Merchants' Magazine; Bankers' Magazine; Schucker's Life of Chase; Spaulding's Legal-tender Paper Money; Newspapers, 1861, 1862, 1863.

J. J. K.

WASHINGTON, April 30, 1884.

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50

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No. 3655

No. 36135

RECEIVABLE IN PAYMENT

The United States

Promise to pay One Year after date

to Wm Armstrong or order Fifty Dollars

with (INTEREST) at the rate of 6 per

per centum. WASHINGTON 16 Dec 184

OF ALL PUBLIC DUES

50

50

Countersigned

Register.

Treasurer of the UNITED STATES.

Rawdon Wright & Hatch New York.

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UNITED STATES NOTES.

CHAPTER I.

COLONIAL PAPER MONEY.

Previous to the Revolutionary War paper money was issued to a greater or less extent by each one of the thirteen colonies. The first issue was by Massachusetts in 1690, to aid in fitting out the expedition against Canada. Similar issues had been made by New Hampshire, Rhode Island, Connecticut, New York, and New Jersey, previous to the year 1711. South Carolina began to emit bills in 1712, Pennsylvania in 1723, Maryland in 1734, Delaware in 1739, Virginia in 1755, and Georgia in 1760. Originally the issues were authorized to meet the necessities of the colonial treasuries.

In Massachusetts, in 1715, as a remedy for the prevailing embarrassment of trade, a land bank was proposed with the right to issue circulating notes secured by land. John Colman, a merchant of Boston, urgently advocated its establishment. The land bank was forbidden by the Province Council, unless authorized by the General Assembly. There was a large party,

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however, in favor of paper money in some form. The plan for the land bank was defeated, but the issue of paper money by the treasury was authorized to the extent of £50,000, to be loaned on good mortgages in sums of not more than £500, nor less than £50, to one person. The rate of interest was 5 per cent., payable with one-fifth of the principal, annually. The bills were in form the same as those previously issued for the benefit of the treasury. This round sum or aggregate of £50,000, to be so loaned, was styled a bank, and was the first of the so-called loan banks, which were afterward authorized by nearly, if not quite, all of the colonies. In 1733 an issue of bills to the amount of £110,000 was made by the merchants of Boston, which were to be redeemed at the end of ten years, in silver, at the rate of 19 shillings per ounce. In 1739, the commercial and financial embarrassment still continuing, another land bank was started in Massachusetts. John Colman was one of the corporators. The stock of the land bank was to be £150,000. No one was permitted to subscribe more than £2,000, nor less than £100. The subscribers were to pay down lawful money at the rate of 40 shillings for every £1,000 subscribed, and for the remainder were to pledge security in lands to the satisfaction of the directors. They were to pay 3 per cent. interest per annum, either in bills of the bank or in produce and manufactures, at prices regulated by the directors. Circulating notes equal to the capital were to be issued, payable in twenty years in produce or manufactures, and 5 per cent. of the capital was to be paid annually in the notes, produce, or articles manufactured. The "manufactures, being the produce of

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this province," were enumerated as follows:[1] "Hemp, flax, cordage, bar iron, cast iron, linens, sheep's wools, copper, tanned leather, flaxseed, beeswax, bayberry wax, sail cloth or canvas, nails, tallow, lumber or cord wood, or logwood from New Spain." This scheme was strenuously opposed by Governor Belcher, but in spite of all opposition £49,250 of its notes were struck off, of which the treasurer of the company issued £35,582, and £4,067 were employed by the directors in trade.

A specie bank was also formed in 1739, by Edward Hutchinson and others, which issued bills to the amount £120,000, redeemable in fifteen years in silver, at 20 shillings per ounce, or gold pro rata. The payment of these notes was guaranteed by wealthy and responsible merchants. These notes, and those of a similar issue in 1733, were largely hoarded and did not pass generally into circulation.

In 1740 Parliament passed a bill to extend the act of 1720, known as the bubble act, to the American colonies, with the intention of breaking up all companies formed for the purpose of issuing paper money. Under this act both the land bank and the specie bank were forced to liquidate their affairs, though not without some resistance on the part of the former. The Governors of Massachusetts rendered themselves very obnoxious to the people by their determined opposition to these banks and to paper money generally,[2] and Governor Belcher

[1] An Historical Account of Massachusetts Currency, p. 103. By Joseph B. Felt. Boston, 1839.

[2] The History of Massachusetts Bay, vol. ii., p. 396. By Lieutenant-Governor Hutchinson. Boston, 1767.

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was recalled to England on account of misrepresentations of the paper money advocates, but was subsequently appointed Governor of New Jersey.

The paper money of the colonies, whether issued by them or by the loan banks, depreciated almost without exception as the amounts in circulation increased. The bills as originally emitted were intended to be equal to coin, but when depreciation advanced to such an extent as to appal the authorities, a new set of bills would be issued, with new assurances that they would be kept equal to coin. In these new bills the old bills would be redeemable at their depreciated value. Sometimes this second set of bills, having also depreciated, was replaced by a third set in the same way. These various sets were designated tenors; the terms old tenor, middle tenor, new tenor, new tenor 1st, new tenor 2d, being used to distinguish them. To give all the details of the depreciation of this currency in each of the colonies would require much space; but the best authorities agree that it underwent in all cases a constant diminution in value, inflicting loss and misery upon all classes of citizens. Pelatiah Webster says of this paper and the continental currency: "We have suffered more from this cause than from any other cause or calamity. It has killed more men, pervaded and corrupted the choicest interests of our country more, and done more injustice than even the arms and artifices of our enemies." The following table[1] gives the price of £100 in coin in the currencies of the several colonies in the year 1748:

[1] A Short History of Paper Money and Banking in the United States, p. 10. By Wm. M. Gouge. Philadelphia, 1833.

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New England	£1,100
New York	190
New Jersey	£180 to 190
Pennsylvania	180
Maryland	200
North Carolina	1,000
South Carolina	750
Virginia	£120 to 125

The emission of bills by the colonies and the banks was not regarded with favor by the mother country, and the provincial governors were as a general thing opposed to these issues. They were consequently frequently embroiled with their legislatures. Felt, in his "Massachusetts Currency," gives examples of this controversy. Governor Belcher, in 1740, issued the following proclamation: "Whereas, a scheme for emitting bills or notes by John Colman, Esq., and others, was laid before the General Court in their session held the 5th of December, 1739, and by a report of a committee appointed by said Court, was represented, if carried on, to have a great tendency to endamage His Majesty's good subjects as to their properties; and whereas, application has been very lately made to me and His Majesty's Council, by a great number of men of the most considerable estates and business, praying that some proper method may be taken to prevent the inhabitants of this province being imposed upon by the said scheme; and it being very apparent that these bills or notes promise nothing of any determinate value, and can not have any general, certain or established credit; wherefore, I have thought fit, by and with the advice of His Majesty's Council, to issue this proclamation, hereby giving notice and warn-

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ing to all His Majesty's good subjects of the danger they are in, and cautioning them against receiving or passing the said notes, as tending to defraud men of their substance and to disturb the peace and good order of the people, and to give great interruption and bring much confusion into their trade and business."

Subsequently, on November 6, of the same year, being assured that part of the military corps encouraged the circulation of the land bank paper, he published the following: "I hereby warn all commissioned officers in the militia from signing or giving any countenance to the passing of the said notes of hand, directly or indirectly. And as I apprehend that if these should obtain a currency, it will reflect great dishonor on His Majesty's Government here, and be very detrimental to the public interests of this province and people, I do hereby declare my firm resolution, that if after this publick notice given, any of the military officers of this province persist in being any way concerned in or giving any encouragement whatsoever to the passing of the said notes of hand, and full proof be made thereof to my satisfaction, I will immediately dismiss them from their said offices." These proclamations had but little effect. A gentleman writing to a correspondent in London, under date of February 27, 1741, says: "Whole troops, nay almost whole regiments either resigned or told their colonels, who examined them, that they would resign rather than not encourage the bills." Later in the same year Governor Belcher writes to Thomas Hutchinson: "You say it would be much better if some other way than by application to Parliament could be found to suppress it (land bank). I assure you, the concerned openly declare they

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defy any act of Parliament to be able to do it. They are grown so brassy and hardy as to be now combining in a body to raise a rebellion, and the day set for their coming to this town is at the election, and their treasurer, I am told, is in the bottom of the design, and I doubt it not. I have this day sent the sheriff and his officers to apprehend some of the heads of the conspirators."

These continued disputes, which largely curtailed the use of an expedient which the colonists considered necessary to their prosperity, together with the action of Parliament in restricting the issue of paper money, embittered the minds of the colonists against England, and had undoubtedly much to do with the final outbreak. The Bubble Act, which laid an interdict on all banking associations having no legal charter within the dominions of the king, was passed by Parliament in 1720. In 1740 another enactment was made, extending the provisions of the act of 1720 to the American colonies, where it had been disregarded. Banking in those days consisted merely in the privilege of issuing circulating notes, and this act restricted all private enterprises of this kind. On June 25, 1751, Parliament enacted a law forbidding paper money of the colonies to be passed, except for current expenses of the Government each year, or in case of invasion by the enemy. It seems also that these exceptional cases, where paper money was permitted, were to be under control of the Crown, as Mr. Bollan, the agent in London of the province of Massachusetts, writes that he opposed the bill on the ground that it might open the way for the unconstitutional exercise of the king's authority in the

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colonies in other matters. Legal tender paper money was prohibited by this act of Parliament, and in 1763 such issues were declared void; but subsequently, in 1773, they were allowed to be received as legal tender at the treasuries of the several colonies.

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CHAPTER II.

PAPER MONEY AUTHORIZED BY THE CONTINENTAL CONGRESS.

THE second Continental Congress was convened in 1775, and, in order to raise funds, having no power to institute taxation, naturally turned toward the expedient of an emission of paper money on the credit of the Union, but in the redemption of which each colony was to bear a part. The first issue was made in June, 1775. For a year these issues continued equal to gold; in two years they had depreciated to 2 for 1; in three years to 4 for 1; in nine months more their relative value was 10 for 1; in September, 1779, it was 20 for 1. Congress now determined that the total issues should not exceed $200,000,000, and renewed the declaration that this currency should be redeemed in full, and went to some labor to prove that the States had the ability to do so. In March, 1780, these issues had so depreciated that their value, as compared with specie, was as 40 to 1. Congress now required the whole to be brought in for redemption at its market value in coin, and also authorized the emission of new notes bearing interest at 5 per cent., and payable six years from date in silver and gold. These were to be exchanged in the proportion of 1 dollar of the new for 20 dollars of the old emission.

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During the year 1780 the notes of the old issue sank first to 75 to 1, then ceased to circulate in the States north of the Potomac. In Virginia and North Carolina they passed for a year longer, and finally depreciated to 1,000 to 1, and then ceased to circulate.

According to Thomas Jefferson, but 200 millions of the first emission was issued, which was the amount authorized by resolution of Congress; but other authorities state the amount much higher. Joseph Nourse, register of the treasury in 1828, places it at $241,552,780. The amount as given in the treasury statement of 1843 was $242,100,176. The aggregate loss to the people of the country from this currency was estimated by Secretary Woodbury at $196,000,000. During the war paper money, distinct from the continental currency, was also issued by several of the States. The amount thus issued has been placed at $209,000,000, which is probably too high. It is, however, difficult to obtain exact information in reference to these emissions.

At the close of the war the minds of all classes were imbued with a wholesome antipathy to paper money, and as a consequence, when the Federal Constitution was under consideration, the power to emit bills, which in the original draft was given to the United States, was stricken out. Moreover, the original draft having contained a qualified permission to the States to issue paper money, an amendment was inserted which took away from the States all power to coin money, emit bills of credit, or make anything but gold or silver coin a tender in payment of debts. It has been held that the lack of power on the part of a State to coin money, taken in connection with the prohibition of the emission of bills, prevents the

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issue of paper money by banks chartered by the State, as well as such issue by the State itself. This view was held by Daniel Webster, in his speech on the Bank of the United States, on the 25th and 28th of May, 1832, and his arguments are quoted with commendation by Mr. Justice Story, in his commentaries on the Constitution, as follows: "It will be hereafter seen that this (the power to coin money) is an exclusive power in Congress, the States being expressly prohibited from coining money. And it has been said by an eminent statesman that it is difficult to maintain, on the face of the Constitution itself, and independent of long-continued practice, the doctrine that the States, not being at liberty to coin money, can authorize the circulation of bank paper as currency at all. His reasoning deserves grave consideration, and is to the following effect: The States cannot coin money. Can they, then, coin that which becomes the actual and almost universal substitute for money? Is not the right of issuing paper intended for circulation in the place and as the representative of metallic currency, derived merely from the power of coining and regulating the metallic currency? Could Congress, if it did not possess the power of coining money and regulating the value of foreign coins, create a bank with the power to circulate bills? It would be difficult to make it out. Where, then, do the States, to whom all control over the metallic currency is altogether prohibited, obtain this power? It is true that in other countries private bankers, having no legal authority over the coin, issue notes for circulation. But this they do always with the consent of the Government, express or implied; and Government restrains and regulates all their operations at its pleasure. It would be a startling propo-

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sition in any other part of the world, that the prerogative of coining money held by the Government was liable to be defeated, counteracted, or impeded by another prerogative, held in other hands, of authorizing a paper circulation. It is further to be observed that the States cannot issue bills of credit; not that they cannot make them a legal tender, but that they cannot issue them at all. This is a clear indication of the intent of the Constitution to restrain the States as well from establishing a paper circulation as from interfering with the metallic circulation. Banks have been created by States with no capital whatever, their notes being put in circulation simply on the credit of the State. What are the issues of such banks but bills of credit issued by the State?" Mr. Justice Story says: "This opinion was not peculiar to Mr. Webster; it was maintained also by Hon. Samuel Dexter, one of the ablest statesmen and lawyers who have adorned the annals of the country."

Nearly thirty years after, Chief Justice Chase, when Secretary of the Treasury, in his report to Congress, of December 9, 1861, said: "It has well been questioned by the most eminent statesmen, whether a currency of bank notes, issued by local institutions under State laws, is not, in fact, prohibited by the national Constitution. Such emissions certainly fall within the spirit, if not within the letter, of the constitutional prohibition of the emission of bills of credit by the States, and of the making by them of anything except gold and silver coin, a legal tender in payment of debts."

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CHAPTER III.

BILLS OF CREDIT IN THE FEDERAL CONVENTION.

The committee appointed by the Federal Convention held in Philadelphia on May 14, 1787, reported, on August 6, a draft of the Constitution, which contained, in article thirteen, a clause giving qualified authority to the States to issue paper money, as follows: "No State without the consent of the Legislature of the United States shall emit bills of credit, or make anything but specie a tender in payment of debt." This clause, after discussion, was finally so amended as to read as follows: "No State shall coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts." The eighth clause of the first section of the seventh article of the Constitution, as presented for the consideration of the Convention, provided that "the Legislature of the United States shall have power to borrow money, and emit bills on the credit of the United States." This clause, as embodied in the eighth section of the first article of the Constitution as finally adopted, reads, "The Congress shall have power to borrow money on the credit of the United States." The debate[1] on the question of striking out the words "and emit bills," is important, for the reason that the subject of making

[1] Madison papers, vol. iii., p. 1343.

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bills of credit issued by the Government a legal tender, was there for the first time discussed, and was not subsequently at any time, as far as I am aware, discussed at any length by Congress, though it was twice presented for its consideration, until the Legal Tender acts of 1862 were brought before Congress for its consideration. This debate was as follows:

"Mr. Gouverneur Morris moved to strike out, 'and emit bills on the credit of the United States.' If the United States had credit, such bills would be unnecessary; if they had not, unjust and useless. Mr. Butler seconds the motion. Mr. Madison: Will it not be sufficient to prohibit the making them a tender? This will remove the temptation to emit them with unjust views. And promissory notes, in that shape, may in some emergencies be best. Mr. Gouverneur Morris: Striking out the words will leave room still for notes of a responsible minister, which will do all the good without the mischief. The moneyed interest will oppose the plan of Government, if paper emission be not prohibited.

"Mr. Gorham was for striking out without inserting any prohibition. If the words stand, they may suggest and lead to the measure. Mr. Mason had doubts on the subject. Congress, he thought, would not have the power, unless it were expressed. Though he had a mortal hatred to paper money, yet as he could not foresee all emergencies, he was unwilling to tie the hands of the Legislature. He observed that the late war could not have been carried on, had such a prohibition existed. Mr. Gorham: The power, as far as it will be necessary or safe, is involved in that of borrowing.

"Mr. Mercer was a friend to paper money, though

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in the present state and temper of America, he should neither propose nor approve of such a measure. He was consequently opposed to a prohibition of it altogether. It will stamp suspicion on the Government, to deny it a discretion on this point. It was impolitic, also, to excite the opposition of all those who were friends to paper money. The people of property would be sure to be on the side of the plan, and it was impolitic to purchase their further attachment with the loss of the opposite class of citizens. Mr. Ellsworth thought this a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which had been made were now fresh in the public mind, and had excited the disgust of all the respectable part of America. By withholding the power from the new Government, more friends of influence would be gained to it than by almost anything else. Paper money can in no case be necessary. Give the Government credit, and other resources will offer. The power may do harm, never good. Mr. Randolph, notwithstanding his antipathy to paper money, could not agree to strike out the words, as he could not foresee all the occasions that might arise.

"Mr. Wilson: It will have a most salutary influence on the credit of the United States to remove the possibility of paper money. This expedient can never succeed while its mischiefs are remembered. And as long as it can be resorted to, it will be a bar to other resources. Mr. Butler remarked that paper was a legal tender in no country in Europe. He was urgent for disarming the Government of such a power. Mr. Mason was still averse to tying the hands of the Legislature altogether.

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If there was no example in Europe, as just remarked, it might be observed, on the other side, that there was none in which the Government was restrained on this head. Mr. Read thought the words, if not struck out, would be as alarming as the mark of the beast in Revelation. Mr. Langdon had rather reject the whole plan than retain the three words, 'and emit bills.'

"On the motion for striking out, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, *aye* —9; New Jersey, Maryland, *no*—2. The clause for borrowing money was agreed to, *nem. con.* Adjourned."

Nine States voted to strike out, and two States to retain. Virginia voted in the affirmative, and in explanation of his vote, Mr. Madison appended the following note: "This vote in the affirmative by Virginia was occasioned by the acquiescence of Mr. Madison, who became satisfied that striking out the words would not disable the Government from the use of public notes as far as they could be safe and proper, and would only cut off the pretext for a *paper currency*, and particularly for making the bills a *tender* either for public or private debts."

Mr. Martin, of Maryland, a delegate to the Federal Convention, who was in favor of retaining the words, in his address to the Legislature of his own State, soon after the proceedings of the Convention, said:[1] "By

[1] "The Genuine Information delivered to the Legislature of Maryland, relative to the Proceedings of the General Convention lately held at Philadelphia, by Luther Martin, Esq., Attorney General of Maryland, and one of the Delegates in the said Convention. Philadelphia: printed by Eleazer Oswald, at the Coffee House. 1788."

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our original articles of confederation, the Congress have a power to borrow money and emit bills of credit on the credit of the United States; agreeable to which was the report on this system as made by the Committee of Detail. When we came to this part of the report, a motion was made to strike out the words, 'to emit bills of credit;' against the motion we urged that it would be improper to deprive the Congress of that power; that it would be a novelty unprecedented to establish a government which should not have such authority. That it was impossible to look forward into futurity so far as to decide that events might not happen that should render the exercise of such a power absolutely necessary. And that we doubted whether, if a war should take place, it would be possible for this country to defend itself without having recourse to paper credit, in which case there would be a necessity of becoming a prey to our enemies, or violating the Constitution of our Government; and that, considering the administration of the government would be principally in the hands of the wealthy, there could be little reason to fear an abuse of the power by an unnecessary or injurious exercise of it. But, sir, a majority of the Convention, being wise beyond every event, and being willing to risque any political evil rather than admit the idea of a paper emission, in any possible case, refused to trust this authority to a Government to which they were lavishing the most unlimited powers of taxation, and to the mercy of which they were willing blindly to trust the liberty and property of the citizens of every State in the Union; and they erased that clause from the system."

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Forty-eight years later, in a speech in the Senate on the famous "specie circular" in 1836, Daniel Webster said: "Most unquestionably there is no legal tender, and there can be no legal tender in this country, under the authority of this Government or any other, but gold and silver, either the coinage of our own mints or foreign coins at rates regulated by Congress. This is a Constitutional principle, perfectly plain and of the highest importance. The States are expressly prohibited from making anything but gold and silver a legal tender in payment of debts, and although no such express prohibition is applied to Congress, yet, as Congress has no power granted to it in this respect but to coin money and to regulate the value of foreign coins, it clearly has no power to substitute paper or anything else for coin as a tender in payment of debts and in discharge of contracts. Congress has exercised this power fully in both its branches; it has coined money, and still coins it; it has regulated the value of foreign coins, and still regulates their value. The legal tender, therefore, the constitutional standard of value, is established and cannot be overthrown. To overthrow it would shake the whole system."

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CHAPTER IV.

TREASURY NOTES AUTHORIZED UNDER THE CONSTITUTION.

THE Constitution was adopted on September 17, 1787, and three years thereafter, Hamilton, in his report of December 13, 1790, on a national bank, said: "The emitting of paper money by the authority of Government is wisely prohibited to the individual States by the national constitution; and the spirit of that prohibition ought not to be disregarded by the Government of the United States. Though paper emissions, under a general authority, might have some advantages not applicable, and be free from some disadvantages which are applicable, to the like emissions by the States separately, yet they are of a nature so liable to abuse—and, it may even be affirmed, so certain of being abused—that the wisdom of the Government will be shown in never trusting itself with the use of so seducing and dangerous an expedient." Although notes of different forms were issued subsequently by the Government at various dates, some of which were receivable for all dues payable to the Government, no circulating notes were authorized to be issued which were payable on demand in coin, until the passage of the act of July 17, 1861, which authorized the issue of fifty millions of notes payable "on demand" and "receivable in payment of all public dues;" and no circulating notes were authorized, which by the terms of law were made a full legal tender, until the passage of the act of February 25, 1862, which was nearly seventy-five years after the adoption of the Constitution. Some

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of the treasury notes, issued since the adoption of the Constitution, and previous to the passage of the Legal Tender act, were receivable for all dues to the Government, and others not; some were payable at a fixed date, both with and without interest; some were fundable at any time after the date of their issue, others at a fixed date in United States bonds.

During the late civil war, treasury notes were also issued of all these different forms, and also notes payable on demand, receivable for all dues to the Government, and others payable to bearer, not receivable for duties on imports, or payable by the Government for interest upon the public debt, but in every other respect a full legal tender to and by the Government, and between the people in all payments. Postage currency was also issued, receivable in payment of all dues less than five dollars; and fractional currency, which was "exchangeable for United States notes" in sums of not less than three dollars.

No notes were issued from 1789 to 1812, a period of twenty-three years. Notes bearing interest were issued in the years 1812, 1813, 1814 and 1815, and at various dates from 1837 to 1847. They were again issued in 1857, and subsequently, in the years 1860, 1861 and thereafter. The periods for the issue of these notes may be summarized as follows: first, the war of 1812; second, the financial crisis of 1837; third, the Mexican war; fourth, the financial crisis of 1857, or during the Buchanan administration; and fifth, the war of the rebellion. It will thus be seen that there have been four emergencies in which Congress has seen fit to authorize interest-bearing notes, and only one in which it has authorized bills of credit or circulating notes payable on demand in lawful money.

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CHAPTER V.

TREASURY NOTES OF THE WAR OF 1812.

THE original debt had, at the beginning of 1812, been reduced from seventy-five millions to forty-five millions. In 1810 it was found impossible to meet all of the annual reduction of the debt required by law from the sinking fund, and a temporary loan was authorized to make up the deficiency, which amounted to $2,750,000. This loan was paid the next year. In 1811, however, recourse was had to a loan, and the one authorized by Congress for that year was taken so slowly, that, in the month of May of the following year the Secretary of the Treasury, for the first time since the adoption of the Constitution, recommended the issue of treasury notes upon the following principle, viz.: "1. Not to exceed, in the whole, the amount which may ultimately not be subscribed to the loan; that is to say, that the amount received on account of the loan, and that of the treasury notes, shall not, together, exceed eleven millions; which limits, therefore, the greatest possible amount of treasury notes to less than $4,900,000. 2. To bear an interest of $5\frac{2}{5}$ per cent. a year, equal to one cent and one-half a cent per day on a hundred dollar note. 3. To become payable by the treasury one year after the date of their respective issues. 4. To be, in the meanwhile, receivable in

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payment of all duties, taxes, or debts, due to the United States." He did not propose that the notes should be fundable in the loan which they were intended to reenforce. This recommendation of Secretary Gallatin was made in his letter of May 14, 1812, to Mr. Langdon Cheves, chairman of the Committee of Ways and Means of the House, and, in conformity therewith, a bill was reported by that Committee on June 12, 1812.

War was declared against Great Britain June 18, 1812. The failure of the loan was due to the fact that the money had to be borrowed from the very classes who had been opposed to the war; therefore, when the bill for authorizing treasury notes was put upon its passage on June 16, it met with much opposition. It was argued that the notes under the bill were not equal in value to gold and silver, and would not be received by the banks or the people, who were prejudiced against such Government paper; that if issued they could not be redeemed, and would depreciate; that the measure would be subversive of public and private credit; that it was a confession of impaired credit; that to allow the notes to be deposited in banks and to accept bank paper in exchange was to depreciate the Government's paper; that if issued, additional taxes should be imposed and set apart for the redemption of the notes, as in the case of the English exchequer notes; that the proposed notes were the same as the old continental money, and would depreciate in the same way.

Others opposed the bill simply because they opposed the war or any preparation for it. In case war proved unavoidable the necessary funds should be raised by taxes and loans. The shortness of the time for which

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the notes were to be issued was another objection. The public revenues would not meet the engagement, and engagements should not be entered into without a certainty of fulfilment. Taxes were necessary. It was a paltry expedient never suggested by Hamilton or Wolcott, and not even the spontaneous production of Gallatin; that the first suggestion of the latter was to authorize a loan on such terms as would have insured its success. It was a humiliating spectacle to exhibit the Government failing in negotiating its first war loan.

On the other hand, the supporters of the bill maintained that the notes would be received by the banks in the same manner as any good individual paper was received. The banks would give the Government credit for them, and in return the Government could draw gold and silver from the banks. The notes would be even more valuable to the latter than specie, as they could be kept as an interest-bearing reserve. They would have currency, being receivable in duties, taxes, and debts due the Government, and, as interest accumulated, they would increase in value. In reply to the suggestions that money should be raised by taxes, it was stated that when, previously, measures of that kind had been proposed, the opposition had refused to consent. The issue of treasury notes, bearing interest at $5\frac{2}{5}$ per cent. only, did not indicate bad, but rather good credit. Individuals in good credit could not borrow at less than 6 per cent. There was no depreciation of Government paper in exchanging the notes for bank paper, as the latter was ready money, while the former were payable one year after date. It was denied that the people had or would have any prejudice against treasury notes.

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They were not prejudiced against bank notes, and the proposed notes bearing interest had many advantages over bank paper. The proposed notes would be in no way inferior to exchequer bills; in fact, it was only want of credit that compelled the English Government to set aside certain revenues to meet the latter. The treasury notes would have two advantages over exchequer bills: one, the superior credit of the United States, and the other, that they were receivable for taxes and public dues. They were also superior to public stocks, in that, while bearing interest, they also can serve as currency, the same as gold and silver, thus enhancing the medium of circulation. There was no resemblance between them and continental money. When the latter was issued, the Government was dependent on the pledges of the several States for its revenues, but now its credit was above suspicion, its power to raise revenue complete, and its ability to pay its debts undoubted. War was unavoidable. Both loans and taxes would have to be resorted to. The proposed notes were nothing but a loan with extraordinary advantages, taking, however, but little from the circulating medium of the country. In many transactions they would have all the effect of money. While not secured by any specific fund set apart for their redemption, the entire duties and taxes of the year are indirectly pledged for this purpose, since they are receivable in payment of such duties and taxes. The revenues of the year were estimated at eight millions, and the proposed issue of notes was five millions only. The faith of the Government was pledged for their redemption. That faith had never been violated. The resources of the Govern-

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ment were ample beyond those of any other nation. Its sources of revenue were unimproved land, a productive agriculture, an extensive commerce, an enterprising people, and an unlimited right of taxation. The anticipated abuse of a privilege was no argument against its legitimate use.

The bill passed the House June 17, 1812, yeas 85, nays 41. It passed the Senate June 26, and became a law June 30, 1812. By it the President was authorized to issue treasury notes to an amount not exceeding $5,000,000. Section two of the first "Act to authorize the issuing of treasury notes," read as follows: "That the said treasury notes shall be reimbursed by the United States, at such places, respectively, as may be expressed on the face of the said notes, one year, respectively, after the day on which the same shall have been issued; from which day of issue they shall bear interest at the rate of five and two-fifths per centum a year, payable to the owner and owners of such notes, at the treasury, or by the proper commissioner of loans, at the places and times respectively designated on the face of said notes for the payment of principal."

They were signed by persons designated by the President, and the compensation of these persons was fixed at one dollar and twenty-five cents each for one hundred notes signed. They were countersigned by the Commissioners of Loans for the State in which the notes were respectively made payable. With the approval of the President, the Secretary of the Treasury was authorized to borrow money upon the security of the notes, and to pay them to such banks as would give the Government credit for them at par. When the notes were paid to

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collectors of revenue and receivers of public money, the interest ceased on the day of payment. The Commissioners of the Sinking Fund were authorized to cause the principal and interest to be paid when due, and to purchase them at not more than par, in the same way as they purchased other public securities, with a view of reducing the debt. They were made payable to order, transferable by delivery and assignment on indorsement by persons to whose order they were made payable. The notes were made everywhere receivable for duties, taxes, and in payment of public land, at their par value with accrued interest on the day paid in. Penalties were imposed for counterfeiting them, and an appropriation made for the expense of printing and preparing the notes.

There was nothing in the law regulating the denominations in which they should be issued, but, as a matter of fact, none were issued of a denomination of less than one hundred dollars. The largest amount authorized under this act, outstanding at any one time, was five millions. The notes authorized were all issued before the end of the year 1813, and were all redeemed during the year 1814. *Niles' Register* for July 4, 1812, in an editorial, thus refers to the issue of these notes. The arguments used in favor of their issue were almost precisely the same as those afterward urged by Chase and Fessenden in favor of the issue of seven-thirty and compound-interest notes:

"To meet any possible exigency from a transient failure of adequate supplies to carry on the war against an unprincipled and inveterate enemy, it has been resolved to issue certain notes from the treasury depart-

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ment, to the amount of about five million dollars, bearing interest of five and two-fifths per cent. per annum, equal to one and one-half cents per day on every note of $100—which notes are to become payable at the treasury one year after the date of their respective issues, and in the meantime are receivable (with interest that may have accumulated upon them) in all payments to be made to the United States.

"This plan appears the most eligible that could possibly have been adopted, as it will mutually accommodate the Government and the people, and be advantageous to both. Yet attempts are making (what will not the enemy attempt?) to depreciate the value of this intended emission, by comparing it with the old continental money. The pitiful design will not avail, for though treasury notes to the value of five millions may issue, the probability is that a ten thousandth part of the population of the United States will never see one of them. The whole will be locked in the vaults of the bank, or snugly put away by individuals as soon as they appear; because they will be convertible into current money (specie or bank notes) at a moment's notice, and have constantly increasing value. The sum to be issued is so completely within the means of the Government, that these notes will always bear a premium equal to the interest that may have accumulated on them. The city of New York itself, in the course of one year would consume the whole emission. The proposed operation of these notes is so perfectly understood by the trading part of the community, particularly on the seaboard, that an explanation of it may well be thought superfluous; but as bad men may seize upon them to

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alarm the ignorant and unsuspecting, it appears right we should offer a few propositions to show their folly and wickedness. A person receives of the United States $10,000 in treasury notes; if he has no use for the money for ten days, he lays them in his desk for that time—the interest in the interim amounts to $15. He then carries them to a bank and deposits them with other monies, for $10,015, or exchanges them with a friend or neighbor (and in our seaports he can always find such) who has duties to pay for that amount. Thus the money is never idle, it works night and day, in the language of money lenders, and is constantly accumulating. The banks will be glad to receive these notes in exchange for their own; the advantage is on their side, as the treasury notes bear a daily interest, and their own bear none at all. If the stock should rise to a greater amount than the bank may think it advisable to keep, which can hardly be possible, they are immediately convertible into any kind of money desired, for the banks always have customers who will use them in payment of bonds due the United States for duties. They are better as deposits than specie, gold, and silver, for gold and silver lie dormant in the vaults, whereas the treasury notes will be an active capital, every hour becoming more and more valuable, and as fully competent to all the purposes of the banks as specie, because they will produce it.

"From these brief remarks it will appear evident that treasury notes, the moment they are issued, will be hoarded up by the banks, if they can get them; and very few of us will be alarmed at the sight of one unless we seek it as a matter of curiosity."

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The Secretary estimated that there would be a deficit of nineteen millions for the year 1813. Congress authorized sixteen millions of this amount to be obtained by loans, without the usual provision that the bonds should be sold at par, or specifying the rate of interest. The loan was placed with great difficulty, the sixteen millions authorized being obtained from the avails of $18,109,377.43 of stock, bearing interest at six per cent.

To supply the remainder, a bill was introduced into the House on January 27, 1813, to authorize a new issue of treasury notes. The bill was similar in its provisions to the act of 1812; the arguments for and against the measure were in the main the same as those of 1812. The opposition complained that much favoritism had been shown in the dealings with the banks. It was alleged that among the banks granting credit in return for the treasury notes deposited, as authorized by the law of 1812, were those acting as depositaries of public moneys derived from the deposits of collectors and public agents; that this very money so deposited by the Government agents was again loaned to the Government on the credit of treasury notes. On the other hand, it was urged that the use of banks as depositaries was unavoidable, and that, in any event, banks would receive incidental benefit from keeping Government deposits. Even if a stock loan was substituted for treasury notes the money realized therefrom would be deposited with the same banks until required by the Government. The bill passed the House by a vote of 79 to 41, and the Senate by a vote of 17 to 9, and became a law on February 25, 1813. The greatest amount of notes authorized by this act, outstanding at any one time, was five millions; they

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were all redeemable by the first quarter of the calendar year of 1815, but at the close of that quarter only $1,483,900 had been redeemed, and all of the remainder was not finally paid until the year 1820, although the greatest portion was called in by 1817. They were issued in denominations of not less than $100.

An act similar in all respects to that of February 25, 1813, passed the House by vote of 83 to 48, and the Senate without debate, on March 1, and was approved March 4, 1814. It authorized the issue of five millions of treasury notes, and of an additional five millions, which, if issued, was to be considered as part of a stock loan for the year, which was subsequently to be authorized. This loan for twenty-five millions was authorized on March 24th of the same year, and could only be placed at a large discount. An additional five millions was therefore issued in place of an equal amount of stock, making in all ten millions of treasury notes issued under this act. These notes were for the first time issued in denominations of less than $100, notes of the denomination of twenty dollars being placed in circulation. The whole ten millions were issued previous to June 30, 1815. The policy of Congress seemed to be to keep the authorized issue of treasury notes each year below the amount of the revenue of the year, or, if more was authorized, they were to be in lieu of, and to re-enforce, stock loans.

On December 26, 1814, an act was passed which authorized the issue of $7,500,000 of treasury notes in place of portions of the loans of March 24th and November 15th not already placed, and three millions more for the expenses of the War Department. These notes bore the same rate of interest and were for the same time as

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those of the act of June 30, 1812, and under this act $8,318,400 of notes were issued, a portion of which was in the denominations of twenties and fifties.

On August 31, 1814, specie payments were suspended except in New England. The accounts of the Treasury Department show that there were outstanding on September 30, 1814, $10,649,800 of treasury notes. Mr. Crawford was succeeded in October by Secretary Dallas, and the latter, in his report to the Committee of Ways and Means on October 17, 1814, said the condition of the circulating medium presented another copious source of mischief and embarrassment. The stock of specie was diminished by exportation, and by its withdrawal into the private coffers of individuals. The multiplication of banks had increased the paper currency, so that it was difficult to calculate its amount, and still more difficult to ascertain its value. Bank currency was of no benefit since the suspension of specie payments, and there virtually existed no circulating medium common to all the citizens of the United States. The money transactions of private individuals were at a stand, and the fiscal operations of the Government labored with extreme inconvenience. Under favorable circumstances, the limited issue of treasury notes would probably afford relief, but they were an expensive and precarious substitute for coin or bank notes. He concluded by recommending the establishment of a national bank, and added: "But whether the issues of paper currency proceed from the national treasury, or from a national bank, the acceptance of the paper in a course of payments and receipts must be forever optional with the citizens. The extremity of that day cannot be anticipated, when any honest and enlight-

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ened statesman will again venture upon the desperate expedient of a tender law." This statement was called out by a report made by Mr. Eppes, Chairman of the Committee of Ways and Means of the House, on October 10, 1814, in which, in order to secure the circulation of treasury notes, it was recommended that notes of small denominations should be issued, to be funded into 8 per cent. stock, payable to bearer, and transferred by delivery, receivable in all payments for public lands and taxes. The internal revenue taxes were to be pledged for payment of interest, and they were to be exchangeable for stock at 8 per cent., or redeemable in specie after six months' notice from the Government.

On November 24, 1814, in a report to the committee to which a bill for establishing a national bank had been referred, Mr. Dallas mentions, as one of the means at the disposal of the Treasury, the issue of treasury notes, "which none but necessitous creditors, contractors in distress, or Government agents acting officially were willing to accept." He also states that the act of November 15, 1814, authorizing treasury notes to be taken in payment for subscriptions to loans, was passed too late; that the interest on the public debt had not been punctually paid, and that a large amount of treasury notes had already been dishonored. In a subsequent communication of December 14, 1814, he said that the non-payment of treasury notes, and the risk of not paying the interest on the funded debt, were chiefly owing to the suspension of specie payments by the banks, and the consequent impracticability of transferring public funds from the place where they were deposited to the place where they were needed. The difficulty referred to

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in meeting the interest upon the public debt was in Boston. A State bank had large Government deposits, and a draft was sent to meet the interest, upon October 1, 1814. The State bank declined paying in coin or bank notes, and the creditors refused to receive the treasury notes that were offered instead. After the suspension, the Government was deprived of the use of specie, and as the banks in each State refused credit and circulation to the notes of banks in other States, no transfer of funds could be made to places where they were wanted to meet treasury notes; consequently the credit of these notes was lessened, and creditors refused to accept them in payment.

On November 12, 1814, Mr. Hall, of Georgia, introduced in the House a series of five resolutions to revive the credit of treasury notes. The second resolution provided that the notes should be a legal tender between citizens, and between citizens and foreigners, for all debts then due or afterward to become due, which the House refused to consider by a vote of 95 to 42—more than two-thirds. These resolutions were evidently introduced as measures in opposition to the proposition for a national bank, and the other four resolutions were subsequently laid upon the table by a large majority.

On January 30, 1815, a bill authorizing the issue of treasury notes in accordance with the recommendations of Secretary Dallas in his communication of January 17th, was introduced in the House and referred to the Committee of the Whole. The bill passed the House February 11th, and the Senate February 21st, and was approved February 24, 1815; it was the last of a series of five acts, commencing with that of June 30, 1812, the

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first four of which had authorized the issue of treasury notes bearing interest at the rate of $5\frac{2}{3}$ per cent. The form of the large notes issued under this act, which in size were $7\frac{3}{8}$ by $3\frac{7}{8}$ inches, is shown on the next page.

This act authorized the issue and reissue of treasury notes to an amount not exceeding twenty-five millions, upon principles essentially different from those governing prior issues. These notes might be of any denomination: if of a denomination less than $100, they were designated as "small treasury notes," were payable to bearer, and bore no interest; if of a denomination of $100 or upward, they were payable to order, transferable by indorsement, and bore interest at the same rate as those of $100 and upward previously authorized. The form of the "small treasury notes," in size $6\frac{1}{2}$ by 3 inches, is shown on page 36.

These notes were not chargeable upon the sinking fund, as in the case of the first three acts of the series, nor were they payable out of any money in the treasury not otherwise appropriated, as in the previous act of December 26, 1814, but rested entirely upon the provision making them fundable into stock. The principal and interest were not payable at any specified time, but the notes were everywhere receivable in all payments to the United States. The act reduced the pay of those signing the notes to seventy-five cents for each one hundred notes, and also provided that treasury notes of previous issue should be fundable into 6 per cent. stock. The holders of the small treasury notes could exchange them at pleasure, in sums of not less than $100, for certificates of funded stock bearing interest at 7 per cent. The treaty of peace was signed on December 14, 1814, but

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ONE HUNDRED DOLLARS.

ONE HUNDRED.

100

A. No. 1782.

100. United States Treasury Department. DESIGN.

October 1, 1815.

The United States promise to receive this Note for One Hundred Dollars, with interest from the date hereof at 5 & 2/5 per cent. per annum, in all payments to them, or to issue, on demand Six per cent. Stock, for the principal and interest thereof to Joseph Delafield, or order, agreeably to the Act of Congress of the 24th of February, 1815.

Interest per day 1⅓ cents
" " per month 45 cents
" " per year $5.40 cents

E Pluribus Unum.

Countersigned
T. D. T. Tucker, Treasurer.

DESIGN.

Samuel Clarke,
Earnest Fox,
In behalf of the United States.

100

ONE HUNDRED.

ONE HUNDRED DOLLARS.

Endorsed on the back: "Pay the bearer, Jos. Delafield."

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FIVE DOLLARS.

No. 3485. *E Pluribus Unum.*

Receivable everywhere by the

5.

United States,

DESIGN.

in payment of duties, taxes and public lands.

Treasury Department, March 25, 1815.

The United States promise to receive this note for Five Dollars in all payments to them or to fund the amount at seven per cent. interest, on request, agreeably to the Act of Congress February 24, 1815.

Countersigned, *Register of the Treasury.*
Joseph Nourse,

J. W. McGeary, *In behalf of the United States.*
C. A. Colville,

FIVE DOLLARS.

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the news reached Washington a few days only before the passage of the bill, which, although a war measure, was carried through, inasmuch as it was considered necessary to the regulation of the disordered finances of the country. The whole amount of treasury notes, absolute and contingent, which was authorized by these five acts, was $60,500,000, of which amount $36,680,794 was issued. The following table exhibits the amount issued under each act:

Under act of June 30, 1812		$5,000,000
Under act of February 25, 1813		5,000,000
Under act of March 4, 1814		10,000,000
Under act of December 26, 1814		8,318,400
Under act of February 24, 1815—$100 notes	$4,969,400	
Under act of February 24, 1815—small treasury notes	3,392,994	
		8,362,394
Total amount issued		$36,680,794

Although the treasury notes of 1815 of small denominations, originally issued, amounted to only $3,392,994, the law made them fundable into 7 per cent. stock, payable after December 31st; and as the notes were reissuable, they were, under various exigencies, again and again paid out, until the whole amount of the 7 per cent. stock issued for the purpose of funding them, amounted to $9,070,386. On account of the high rate of interest of these bonds, the small treasury notes were in demand, and a small amount was sold at a premium of 4 per cent., and $1,365,000 at a premium of $32,107.64, or about 2½ per cent. The Secretary, in his annual report for 1815, says: "The treasury notes,

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which were issued under act passed previous to February 24, 1815, were, for the most part, of a denomination too high to serve as a current medium of exchange; and it was soon ascertained that the small treasury notes, fundable at an interest of 7 per cent., though of a convenient denomination for common use, would be converted into stock almost as soon as they were issued." [1] The notes of $100 and upward, though fundable into 6 per cent. bonds, were depreciated from 8 to 10 per cent. below bank notes, which bore no interest, but were redeemable in specie.

In recapitulation, it may be stated that the treasury notes of the period of the war of 1812 were issued under five acts of Congress, as stated in the table. The notes of the first three acts were made chargeable to the sinking fund—those of the last two, not; those of the first two acts were in denominations of not less than $100; those of the next two were not less than $20; and those of the last act were in denominations of $3, $5, $10, $20, $50, $100 and upward. Those of the first three acts were not originally fundable into stock, but were made so by the act of November 15, 1814, and by the subsequent act of February 24, 1815. The notes of the acts of December 26, 1814, became fundable by the act of February 24, 1815, but those of the last-named act were fundable by the terms of their authorization. The notes of all the acts but the last were made payable one year from the date of their issue; those of the last act were payable at no fixed date. All of these notes (with the exception of the small treasury notes, which were with-

[1] Report of the Secretary of the Treasury, 1815, p. 26.

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out interest) bore interest at the rate of 5⅔ per cent. None were in the form of a promise to pay coin on demand, but all in the form of a receipt for all dues payable to the Government. None of these notes had any legal tender quality, and Congress, without debate, rejected the only proposition made to give them this quality. The denominations, except in the case of the small notes of 1815, were too large for general circulation, and the inducements for funding the latter were so great that they were speedily funded into seven per cent. bonds. As long as the banks redeemed their notes in specie, treasury notes appear to have been kept at par, but when specie payments were suspended, they began to depreciate, but were kept from great discount by the funding acts of November 25, 1814, and February 24, 1815. It is said, "that of eighty millions of loans negotiated by the Government during this period, the avails were only thirty-four millions, after deducting discounts and depreciations."[1] After the close of the war, in December, 1814, these notes were rapidly funded.

[1] Report of Committee of Ways and Means, April 13, 1830.

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CHAPTER VI.

TREASURY NOTES OF THE PERIOD OF THE FINANCIAL CRISIS OF 1837.

In anticipation of a large surplus, Congress, by act of June 23, 1836, provided for the distribution of a large amount of Government money among the States in proportion to their representation in the Senate and House of Representatives, and three instalments, amounting in all to $27,063,430, were so distributed.[1] In the meantime, about May 1, 1837, specie payments were suspended, owing to the great depression in commercial circles. An extra session of the 25th Congress was called in September of the same year. The charter of the second Bank of the United States had expired on March 4, 1836, and on June 23, 1836, Congress had passed an act authorizing and regulating the deposit of public moneys in State banks. No action was taken during the extra session toward rechartering the Bank of the United States. The distribution of the fourth instalment to the States was, however, postponed, but the Secretary was prohibited from calling for any of the money already distributed without special authority from Congress, which has not, up to the present date, been given.

The revenues for the year (1837) were from six to ten

[1] See page 180.

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millions short of the expenditures. The public funds already deposited with the States were unavailable, and there was another instalment to be deposited on October 1st. The Secretary recommended the withholding of this instalment, and, in order to supply currency, an issue of treasury notes, the small denominations to bear no interest, and the large with interest.

A large party in Congress were in favor of rechartering the Bank of the United States. The advocates of treasury notes urged the issue principally upon the ground of necessity, there being no currency upon which the Government could rely to make and receive payments. Many were in favor of a substitute to be issued by the proposed new Bank of the United States. A bill was presented and passed by the Senate. When it came to the House, objection was made that it was a money bill, which the Senate had no constitutional right to originate. This point was not discussed, but the Committee of Ways and Means presented their own bill, by which the issue of ten millions in treasury notes was authorized. The bill encountered much opposition, particularly from those in favor of authorizing a new bank, but passed the House on October 9, 1837, by a vote of 127 to 98, which was a strict party vote. In the Senate, the next day, Mr. Benton moved to make the lowest denomination of notes $100, instead of $50, as provided in the bill. He presented strong objections to the issue of treasury notes. Nothing but the fact that the Government must otherwise stop for want of funds, would induce him to vote for paper money in time of peace. He particularly objected to the policy of reducing the denominations of paper currency. It was the most dan-

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gerous feature of the system, and would drive all specie from circulation. Mr. Clay spoke in favor of Mr. Benton's motion, and characterized the whole measure to be, to all intents and purposes, a great bank experiment, and alluded to the inconsistency of issuing, in time of profound peace, ten millions additional notes after decrying the banks for enlarging their circulation. Mr. Webster favored Mr. Benton's motion. It was lost by a vote of 25 to 16. The bill then passed by a vote of 35 to 6, both Mr. Benton and Mr. Webster voting for it, and Mr. Clay against it. This bill authorized the issue of treasury notes to an amount not exceeding ten millions, and in denominations not exceeding fifty dollars. The interest was not to exceed 6 per cent; and they were to be payable, principal and interest, after one year from date, and were, for the first time, signed by the Treasurer and countersigned by the Register. They were to be issued in payment of the debts of the United States to any creditor who would receive them, and were to be receivable in payment of all debts and dues to the Government. They were not reissuable, and the authority to issue terminated December 31, 1838. The ten millions authorized were issued by Secretary Woodbury previous to July 1, 1838. About two millions were issued at the nominal rate of interest of 1 mill per cent.; three millions at 2 per cent.; and over four millions at 5 per cent. On account of the low rate of interest upon a large portion of the notes, the object for which they were issued, namely, to supply a circulating medium, was thwarted, for they were soon presented in payment of taxes, and over five millions were retired before the whole amount had been issued.

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At the end of 1837 the Secretary estimated that the balance in the treasury for July, 1838, would be $34,-187,000, of which $28,101,644 was due from the States, $1,100,000 due chiefly from insolvent banks, and $3,500,-000 from other banks, payment of which was postponed. These sums, and the bullion fund in the mint, reduced the estimated available balance in July, 1838, to about one million. This estimate was nearly correct, for Congress was advised by the President, in May, 1838, that only $216,000 of available funds remained in the treasury. There were several propositions in the House, one of which was a bill for authorizing loan certificates, which should be a legal tender to public creditors, but not receivable for dues to the Government. The question of the legal tender was not discussed. Mr. Cambreleng, of New York, from the Committee of Ways and Means, reported a short bill, authorizing the issue of treasury notes to the amount of the issue of October, 1837, which had been redeemed and cancelled. The interest upon the issues already made under the laws of 1837 had been too small, and they had been immediately paid into the treasury when due. There were gratifying signs of a revival of prosperity. The Northern banks had resumed specie payment sooner than expected. This he ascribed to the firmness of the President in refusing to allow dues to the United States to be paid in notes of banks not paying specie. He referred to the passage of the Free Banking act of New York as a presage of sound banking in future. He also urged the necessity of providing notes to enable the treasury to meet its payment. The objections to the bill were much the same as those urged in the debate during the previous session, though they were presented with

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more force and completeness, particularly by Mr. Caleb Cushing. He said that such issues were bills of credit not warranted by the Constitution; that they were based only upon the faith of the Government; that such measures were considered of doubtful and dangerous character by all the friends of democratic institutions; and that Madison and others had always been opposed to the issues of Government paper founded not on funds or specie, but only upon faith or credit, and only consented to its expediency in remarkable exigencies. Experience had shown, that whatever interest they might bear, whether 1 mill or 6 per cent., they would not be above the value of the notes of good banks. It was said that, if the United States under the Constitution could issue these bills, so could the States. They were the same as continental money, although bearing interest. Much of the currency issued by the States, during the revolution, denominated bills of credit, bore interest. Chief Justice Marshall's definition[1] of bills of credit was, "paper issued by the sovereign authority, and intended to circulate as money." These notes are issued by sovereign authority, and intended to circulate as money. They operate unequally, and afford no general relief; they are below par

[1] The Supreme Court of the United States in a famous case, Briscoe *vs.* Bank of Kentucky, 11 Pet., 257, held that a note of circulation "issued by a State, involving the faith of the State, and designed to circulate as money on the credit of the State, in the ordinary course of business," is a bill of credit. Other decisions of the Supreme Court—Craig *vs.* Missouri, 4 Pet., 410; Byrne *vs.* Missouri, 8 Pet., 40—hold "that certificates issued by a State in sums not exceeding ten dollars nor less than fifty cents, receivable in payment of taxes, the faith and credit of the State being pledged for their redemption, are bills of credit within the prohibition of the Constitution."

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in New York, and at 5 per cent. premium in Charleston. The bill was amended to obviate some technical objections, and finally passed by a small majority, 106 to 99, on May 16, 1838. It came up in the Senate on May 18th. Wright, of New York, Benton, Calhoun, Brown, and Talmadge were in favor of it. Webster, Clay, Crittenden, and Preston were on the other side. The discussion took a wide range, involving the causes of the condition of the treasury, and the constitutionality of the issue of treasury notes. It passed by a vote of 27 to 13, and was approved on May 21, 1838. Nearly five millions were issued within one month after the passage of the bill, which showed conclusively the pressing needs of the treasury. Under the previous acts of October, 1837, and May 21, 1838, the authority to issue treasury notes expired on January 1, 1839. The whole issue was not to exceed ten millions, and the latter act permitted the reissue of those paid in.

The whole amount which had been issued to December, 1838, was $15,709,801.01, with interest as follows: $6,888,809.60 at 6 per cent.; $4,280,273.72 at 5 per cent.; $2,784,844.73 at 2 per cent.; and $1,755,881.96 with interest at 1 mill per cent. There had been redeemed, up to the same date, $7,955,250, leaving $7,754,560 outstanding. The authority to reissue expired with the year. On January 1, 1839, there was a large amount of notes in the treasury, which continued to grow larger until March 2, 1839, when an act was passed, extending the authority to reissue until June 30, 1839, provided the whole amount outstanding did not exceed ten millions. In December, 1839, Secretary Woodbury reported that at no time had more than ten

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millions been outstanding, and that the amount outstanding was less than the amount due from suspended banks, and from the Pennsylvania bank of the United States, to the Government, and that the principal and interest on the treasury notes had always been promptly paid when desired.

A bill was subsequently presented by Mr. Jones, Chairman of the Committee of Ways and Means. Amendments were offered requiring that the notes should bear interest at not less than 2 per cent., and making them negotiable and transferable only by indorsement, in the same manner as bills of exchange: the first to prevent the issuance of notes at the nominal rate of 1 mill per cent., or one-thousandth of 1 per cent., per annum, and the second to prevent their circulation as money, and both to cure, as was alleged, the constitutional difficulty which pertained to bills of credit issued by sovereign authority and intended to circulate as money. The Whigs refused to vote, leaving no quorum. On March 24, 1840, the House continued in session from ten o'clock until five P.M. of the next day. Finally, when the House adjourned, the consideration of the bill was fixed for the following Friday, and on that day —March 27, 1840—it finally passed the House by a vote of 110 to 66. It passed the Senate on March 30, 1840, and was approved the following day. On page 47 is the form of a $100 note issued under this act. On each end of the reverse were printed the figures 100. Under this act the issues amounted to $7,114,251. Notes were to be redeemed sooner than one year, if the condition of the treasury would admit, and at any time within the year, after sixty days' notice.

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Act of March 31, 1840.

100 No. 734. No. 734. 100

The United States,

Promise to pay, One Year after date, to

_____ or order, One Hundred Dollars,

with interest at the rate of Five per centum.

Receivable in Payment of all Public Dues.

Countersigned, Washington, 29 July, 1840.

Register. Treasurer of the United States.

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The Secretary, in his report for 1840, states, that treasury notes had been at par during the year, although never bearing interest higher than 5⅔ per cent.,[1] and subject to payment after sixty days' notice. To meet the wants of the treasury, a treasury note bill was introduced, and passed Congress on February 15, 1841. This law authorized an issue of notes, in the aggregate, of $10,000,000, one-half to be issued in payment of amounts due and payable prior to March 4, 1841, and the remaining $5,000,000 in payment of amounts due and payable after that date. In all, $7,529,062 were issued under act of February 15, 1841.

In the fall of 1840, Harrison had been elected President to succeed Van Buren, but died April 4, 1841. He was the representative of the Whig party, which had, since the year 1837, so bitterly opposed the issue of treasury notes. Mr. Ewing, of Ohio, was appointed Secretary of the Treasury by President Harrison. In his report to Congress at its special session of May 31, 1841, he said that, from January 1, 1837, to March 4, 1841, the expenditures of the Government had exceeded the revenues by over $31,000,000. Of about twenty-six millions of treasury notes issued under the acts from October 12, 1837, to February 15, 1841, inclusive, all but about six millions had, as claimed by Secretary Woodbury, been issued in anticipation of revenues, or upon the basis of existing debts due to the United States, leaving about six millions outstanding when the new administration came in. Mr. Ewing estimated that the deficit in the revenues for the year 1841, after meet-

[1] Finance Report, vol. iv., p. 354.

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ing the current expenses and redeeming the treasury notes then outstanding and to be issued, would be $12,088,215, which he considered to be the amount of the public debt. He objected to the issue of treasury notes, and recommended a loan redeemable after eight years or upon six months' notice by the Government.

A bill was introduced by Millard Fillmore, Chairman of the Committee of Ways and Means, on June 24th. It provided a loan, payable after January 1, 1856, with interest at 5 per cent., and authority was given the Secretary to purchase the bonds out of any surplus in the treasury. It was objected that the loan was unnecessary, and that it was the commencement of a scheme to organize a national bank. The debate was bitterly political. It was urged, that as this was an administration measure, the loan should be paid within the term of the administration. This point was foolishly conceded, but the rate of interest was raised to 6 per cent. As thus amended the bill became a law on July 21, 1841. The reduction of the length of the loan from eight to three years, together with the proviso that no stock could be sold below par, destroyed the usefulness of the measure, and less than one-half, or only $5,672,076, of the stock was sold, which was about equal to the amount of treasury notes outstanding.

On September 13, 1841, Mr. Ewing was succeeded by Secretary Forward, of Pennsylvania. The policy of the administration was changed by the death of the President. The repeal of the Independent Treasury act August 13, 1841, which had been authorized at the close of the Van Buren administration, was about the only

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point gained by the Harrison administration, and this repeal practically left the treasury to be managed by those who were unfriendly to the policy of the Whig party.

A bill for the issue and reissue of treasury notes was introduced into the House by Mr. Fillmore, January 5, 1842. Among other proposed amendments which were rejected, was one by Mr. Benton, heavily taxing all bank circulation, especially small notes. The bill became a law January 31, 1842. Under it the amount authorized to be outstanding at any one time was limited to five millions, but the total amount issued and reissued was $7,959,994. The subsequent act of August 31, 1842, authorized the issue and reissue of treasury notes, provided the amount outstanding at any one time should not exceed six millions, and under it notes to the amount of $3,025,554.89 were issued.

All of the notes issued since the act of October 12, 1837, were issued payable either one or two years after date, chiefly for one year. These notes were continually falling due and embarrassing the treasury. Eleven millions of such notes were to fall due during the year 1843, and accordingly another bill was introduced by Mr. Fillmore, providing for the reissue of such notes as should be redeemed before July 1, 1844. The bill became a law on March 3, 1843.

The amount of the treasury notes outstanding on the dates named from November, 1837, to March, 1843, are shown in the following table:[1]

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[1] Page 186, 3d Session 27th Congress, Appendix. Speech of Woodbury.

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Months.	1837.	1838.	1839.	1840.
March	.....	$6,518,964.65	$6,552,946	$2,176,981
November	$53,723.83	8,009,760.01	3,394,180	4,664,200
		1841.	1842.	1843.
March		$5,393,094.00	$8,539,115	$11,656,387
November		7,371,705.00	10,039,056	.....

John C. Spencer succeeded Walter Forward as Secretary of the Treasury, on March 3, 1843, and was himself succeeded, on June 15, 1844, by George M. Bibb. Under the act of March 3, 1843, Mr. Spencer issued about $850,000 treasury notes. On the face of each note[1] was engraved "The United States promise to pay, one year after date, to ——— or order, fifty dollars, with interest at the rate of 1 mill per $100 per annum." On the back of each note, lengthwise, was engraved, "This note will be purchased at par for the amount of principal and interest thereof, on presentation at either of the Depositaries of the Treasury in the City of New York." These notes, which were issued at the nominal rate of interest of one-thousandth of 1 per cent. per annum, and by the indorsement made payable on demand, were considered by Congress an evasion of the act under which they were issued. The Secretary of the Treasury, in his report for December 6, 1843, had stated that less than $270,000 of these notes had then been issued, and asserted that the right to purchase such notes at par on presentation was given by the eighth section of the act of October 12, 1837, as follows: "And the said Secretary is further authorized to make purchases of the said notes, at par,

[1] See Frontispiece.

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for the amount of the principal and interest due at the time of purchase on such notes." The Committee of Ways and Means were instructed, on January 15, 1844, "to inquire and report whether the notes lately issued by the Treasury Department, bearing a nominal interest and convertible into coin on demand, and now forming part of the circulating medium of the country, are authorized by the existing laws and Constitution of the United States;" and the report of the Committee, which also contains a letter of the Secretary giving his views on the subject, is interesting from the fact that it contains the principal constitutional arguments against the issue of paper money by the Government.[1]

During the second session of the 27th Congress, after the veto, by President Tyler, of a bill to authorize the organization of a Bank of the United States, he recommended the passage of a bill for the issue of exchequer bills of not less than $5 in denomination, which notes were to be signed by the Treasurer of the United States, and countersigned by the President of the Board of Exchequer, and redeemable in gold and silver on demand at the agency where issued. This bill, which was prepared at the Treasury Department, did not become a law, and it was claimed by the Committee that the notes issued by Secretary Spencer were in most respects like the exchequer notes proposed in this bill. The principal difference was, that while the exchequer notes were to be in denominations as low as $5, without interest, the notes issued were of denominations not less

[1] Report No. 379, 28th Congress, 1st Session, H. of R.

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than $50, and bore a merely nominal rate of interest. It was claimed by the Committee that the Constitution authorized the Government to borrow money, but not to issue bills of credit; that borrowing money implied the paying of interest for the money borrowed; that interest-bearing treasury notes payable at a future day were a temporary loan, not designed to circulate as money, and could properly be issued; while notes bearing no interest and payable on demand were bills of credit, and could be issued only in violation of the Constitution.

The following are extracts from the report of the Committee: "The power to issue treasury notes under the act of March 3, 1843, at a rate of interest not exceeding six per centum per annum, should the wants of the public service require, in place of others redeemed before the first day of July, 1844, seems to be clearly granted. The notes are to be redeemed at the Treasury after one year from their dates, respectively; and the Secretary is authorized to make purchases of said notes, at par, for the amount of principal and interest due at the time of purchase. This is construed to mean, and the Committee do not intend to question such construction, a purchase before the expiration of one year, when the notes would, by limitation of time, become payable. Such purchases, however, in anticipation of time, necessarily imply the ability of the treasury to make them, and fair notice to the holders. These issues promise, on their face, to pay one year after date. In good faith, in point of fact, they are issued because required by the wants of the public service. If the wants of the public service really require the issue of treasury notes, to supply the deficiency of

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means, then it is clearly impossible that the ability to purchase the notes should exist at the time of issue, and to make them, *presently*, convertible into coin. If the means to purchase are coextensive with the amount issued, coeval and coexistent, then it is perfectly manifest that the wants of the public service do not require the issue. If the wants of the public service require the issues, then there must be a present inability to redeem. Whether this inability will be removed before the efflux of one year depends upon the income of revenue, and consequent improved condition of the treasury.

"The ability to purchase the notes within the year, therefore, is, at the time of issue, a future contingency; which cannot be foreknown by the Secretary, so as to authorize him to give notice that the notes will be purchased at par, at all times on presentation, and at any time after the date of issue. The sound construction and the common-sense view of the matter seem to be, that the notes may be issued, if the wants of the public service require; and if it shall be seen, subsequently, that the treasury can spare the means, then, and not till then, is the Secretary authorized, or indeed able, to make the purchase; and ought not, and cannot, but upon ascertainment of the existence of those means, give notice to the holders of the notes to be purchased. How can it be known what amount in the treasury, not otherwise appropriated, will be applicable to the purchase? How can it be known what specific amount can be drawn from the treasury to make purchases of notes?

"These views render it clear that the notice endorsed on the notes, and issued simultaneously with them, that they will be purchased on presentation, is not such

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notice of purchase, as to time or amount, as the act authorizing the purchase contemplates; nor is it such notice as a common borrower of money upon time, of one year, with the privilege of redeeming within the time, if able, would give to his lender. * * It is a useless and dangerous experiment with the public faith and public credit in times of peace. The public credit should be used sparingly in time of peace; should be nursed and invigorated, so that it might be a safe reliance in great and pressing emergencies. But nobody can suppose that the Secretary either expected, desired, or intended, that these notes should be actually forthwith presented and paid. It is impossible to avoid the conclusion, that the whole plan of issuing notes payable on demand, as these notes are, in fact, made payable on demand, by the endorsement, is a deliberate contrivance of the Secretary of the Treasury, with the approbation of the President, to infuse into the circulation of the country, Government paper. * * The Committee may admit that the maximum rate of interest being six per cent. per annum, and no restriction as to a minimum rate, that a mere nominal rate of interest cannot, of itself, be charged as transgressing the letter of the law. But if a mere nominal rate of interest be charged for the purpose of aiding in an object not contemplated by the law or authorized by the Constitution, then such nominal rate of interest is a mere pretext to cover a perversion of law, and a violation of the Constitution. The nominal rate of interest is so very small as hardly to admit of computation; and for all practical purposes, the notes may be regarded as carrying no interest; whilst the endorsement, that they will be paid at sight,

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at either of the depositaries of the Treasury, in the city of New York, imparts to them the character of ordinary bank paper, calculated and intended to circulate as money, in the hands of the citizens. It is an emission of paper, on the public credit, to be circulated as money, like bank notes. * *

"It is strongly to be inferred that Congress did not intend or expect any departure from the former practices, much less the introduction of a new principle. For the Committee conceive that the issue of notes payable on demand, out of funds then on hand, and in the treasury, is totally different in principle from the issue of notes promising to pay one year after date, intended to supply a present deficit in the treasury, and to be reimbursed thereafter out of accruing revenue. * * The power to borrow money on the credit of the United States was unanimously given, whilst the power to emit bills of credit was *refused*—was struck out of the plan proposed, by a vote, in convention, of nine States to two. And yet the Secretary of the Treasury contends that because there are no express words of prohibition, as there are applied to the States, that Congress may exercise the power incidentally or appertinently to the power of borrowing money, whilst the States are totally precluded from a resort to bills of credit, either as a principal or primary power, or in any way as incidentally or appropriately connected with some other power clearly reserved to the States. It was thought that it was too late to undertake to revive the exploded Federal doctrine of claiming power because it had not been expressly forbidden. And it is a matter of equal surprise that, at this late day, it should be seriously maintained

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by any federal officer, that bills of credit (a paper currency) may be supplied to the country under cover of the granted power to borrow money. The power to supply a paper currency is thus made of contingent existence, depending, first, upon the necessity of exercising the primary power to borrow money, and then upon the policy adopted of making the loan more permanent, in the shape of funded debt, or upon shorter time, in the shape of treasury notes. The want of additional currency might possibly be experienced by the country, when there would be no deficiency of means in the treasury to make a loan necessary or proper. In this condition of affairs there would exist no authority to supply the needed currency. Again, a temporary loan might become necessary, and might be authorized by Congress in the form of treasury notes, at a time when the country was abundantly supplied with a sound circulating medium, and in that condition of affairs, according to the argument of the Secretary of the Treasury, under cover of the authorized loan, and by the adoption of a peculiarly ingenious mode of issuing the notes of the treasury, a currency, not needed, might be supplied. * * The omission to give the power to the Federal Government 'to emit bills of credit' as completely bars that Government from the exercise of the power, as does the express prohibition to the States 'to emit bills of credit' bar them from the exercise of such power. According to the received and well-established doctrine, that the States are sovereign, and have the right of self-government, it would follow that they might impart to their legislatures ample powers to legislate upon all subjects whatsoever meet for legislation;

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that they might constitute them, under their own constitutions, *complete* legislatures. Hence they agreed, in convention, to abstain from the exercise of certain enumerated powers, which otherwise would justly and rightfully pertain to them as 'free and independent States.' And intending, in good faith, to relinquish and abandon the exercise of those certain powers, they inserted in their constitutional compact of union express prohibitions. The States, by fair and natural construction, would retain to themselves all powers not conferred exclusively upon the Federal Government, or expressly prohibited to the States; and yet, out of abundant caution, and to remove the possibility of doubt or cavil, an express amendment of the Constitution to that effect was adopted and ratified.

"It will not be questioned by the Secretary, the Committee suppose, that the States did possess, and have reserved the power to borrow money. Certain it is, that they have very generally and very extensively exercised such power. Now, if the power to borrow money on the credit of a State be unqualified, like the power of Congress to borrow money on the credit of the United States, the Committee cannot comprehend the logic by which the conclusion is reached, that, in the latter case, whilst the absolute and independent power of issuing bills was intentionally withheld, yet it was meant to leave Congress unrestricted in the choice of such means of borrowing, if the emission of bills should, at any time, be deemed the most expedient mode of attaining that object; and by which, in the former case, the other and contrary conclusion is also reached, that whilst the absolute and independent power of emitting bills of

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credit is prohibited to the States, the like unrestricted choice in the means of borrowing, by the emission of bills, should at any time be deemed the most expedient mode of attaining that object, is not left to the States. Neither Congress nor the States can emit bills of credit, in the exercise of an absolute and independent power. Congress and the States possess the unqualified power to borrow money. Congress is unrestricted in the choice of means, and may issue bills of credit, if that mode of borrowing should, at any time, be deemed the most expedient. The States, however, are not equally unrestricted in the choice of means, and may not issue bills, although that mode of borrowing should, at any time, be deemed the most expedient. * * When the loan obtained is for any considerable length of time, it is usual to fund the debt thereby created by issuing certificates of stock. Where the loan obtained has only a short time to run, and it is proposed to pay it off speedily with the accruing revenue, the ordinary mode is, to authorize the Secretary of the Treasury to issue treasury notes, payable at the expiration of a limited time, bearing such interest as may be expressed and allowed by the act directing the issue of the notes. Such notes are intended, *bona fide*, as a temporary loan, and are not designed or expected to circulate as a currency. Such notes were doubtless within the contemplation of Gouverneur Morris, when he remarked, that striking out the authority to issue bills of credit, would not prevent the use of the notes of a responsible minister, and *that* would do all the good without the mischief. * * The use of public notes can be justified only as the mode of effecting a loan—they are employed to

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acknowledge the existence of a debt due by the United States, and contain a promise to pay it, at some future stipulated time, with interest, as may be agreed. To issue notes for circulation, payable on demand, under cover of the authority to borrow money in the form of treasury notes, is deemed an abuse of authority which ought to be corrected."

From March 3, 1843, until July 26, 1846, no new issues of treasury notes were authorized. From 1837 to 1844 treasury notes amounting to $47,002,900 were issued under eight different acts, of which $46,216,935.82 were redeemed by the close of 1845. The lowest denomination for any one note was $50, but where new notes were issued in place of old ones the accrued interest was often added. The amount authorized to be originally issued by these several acts was thirty-one millions. The remainder consisted of reissues.

The notes issued under the act of October 12, 1837, and the six succeeding acts were all printed from the same series of plates, and the different rates of interest were inserted in writing. A new set of plates were prepared for notes issued under the act of March 3, 1843, and the following words, " with interest at the rate of one mill per $100 per annum," were engraved in the body of the note. These notes were all of the same size, the largest ever issued, and measure eight by four inches. Photo-lithographs of the originals issued under these acts may be found at the beginning and end of this volume.

The following table exhibits the amount of treasury notes issued each year, under different acts of Congress, from October 12, 1837, to March 3, 1843, from which it will be seen that the total amount issued was

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$47,002,900, all of which was sold or issued at par. Interest varied from 1 mill per cent. to 6 per cent., and the amount authorized was fifty-one millions.

1837—Act of October 12, 1837	$2,992,989 15
1838—Act of October 12, 1837	7,007,010 85
1838—Act of May 21, 1838	5,709,810 01
1839—Act of March 2, 1839	3,857,276 21
1840—Act of March 31, 1840	5,589,547 51
1841—Act of March 31, 1840	1,524,703 80
1841—Act of February 15, 1841	6,468,856 70
1842—Act of February 15, 1841	1,060,206 05
1842—Act of January 31, 1842	7,914,644 83
1843—Act of January 31, 1842	45,350 00
1843—Act of August 31, 1842	2,408,554 89
1843—Act of August 31, 1842	617,000 00
1844—Act of March 3, 1843	1,806,950 00
Total	$47,002,900 00

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CHAPTER VII.

TREASURY NOTES OF THE PERIOD OF THE MEXICAN WAR.

On July 1, 1844, the public debt of the United States amounted to $24,748,188, and consisted principally of stocks not payable until the lapse of ten and twenty years.[1] The 5 per cent. stocks payable in ten years were at a premium of 106, and the 6 per cent. stocks payable in twenty years, at a premium of 116. The Secretary estimated that the revenue under the tariff of 1842 would yield a much larger amount than was necessary. Accordingly, Congress, in July, 1846, passed a bill amending the tariff and reducing the duties on imports. In the meantime, during the year 1845, difficulties with Mexico, owing to the annexation of Texas, rendered war inevitable, and on May 13, 1846, war was declared. Secretary Walker estimated that, if the war should continue for a year, there would be a deficiency of more than twelve millions; and, in order to meet this deficiency, a bill was reported from the Committee on Ways and Means, which, with some additions, embodied the provision of the act of October 12, 1837, as to treasury notes, and that of April 14, 1842, as to a loan. The following is the form of a $100 note issued under this act: *See page* 65.

[1] Report of Secretary Bibb, 1844.

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These notes were printed from the plates used for printing the notes authorized by the acts of October 12, 1837, to August 31, 1842. The bill referred to authorized an issue of treasury notes to an amount of ten millions, which could also be reissued, and also a loan which could be issued in lieu of treasury notes; the amount of both not to exceed ten millions. The stock was to be redeemable after ten years, no notes of less than $50 were to be issued, and they were to be signed by the Treasurer and the Register. The rate of interest was not to exceed 6 per cent. Notes were to be used in payment of public creditors who would receive them, and the Secretary could borrow money on them. The bill became a law July 22, 1846. Under this act, $7,687,800 of notes were issued, and $4,999,149 of stock. Of these notes $2,086,550 bore interest at $5\frac{2}{5}$ per cent. and $1,766,450 at 1 mill per cent. per annum.

In January, 1847, the treasury was again in need, and to meet this necessity a bill was introduced, authorizing the issue of twenty-three millions of treasury notes, and an additional five millions under the act of July 22, 1846. This was an elaborate bill, containing all necessary provisions within itself, without referring back to the provisions of previous acts, as had been usually the case in legislation of this kind. The debate was principally upon the conduct of the war, and, after one or two amendments had been agreed to, the bill passed the House on the same day that it was introduced, by a vote of 166 to 22. In the Senate, on January 25th, a resolution to postpone its consideration was lost, and the debate took considerable latitude, principally upon the tariff question. The general sentiment appeared to be, that

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100 Act of July 22d, 1846. 100

No. 4220. No. 4220.

The United States,

Promise to pay, One Year after date, to

.....or order. One Hundred Dollars,

with interest at the rate of Five 2/5 per centum.

Receivable in Payment of all Public Dues.

Countersigned, Washington, 5 Dec'r, 1846.

Register. Treasurer of the United States.

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100 Act of 28th Jany. 1847. 100

Receivable in payment of all Public Dues.

Two Years after date, The United States Promise to pay One Hundred Dollars, to the order of.....

with interest at six per cent. per annum.

Washington, 8 Dec'r, 1847.

Countersigned,

Register of the U. S. Treasury.

Treasurer of the United States.

Principal fundable at the option of the holder in United States six per cent. stock, bearing semi-annual interest, redeemable after 1867.

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Pay to Bearer.

Interest, 6 Dollars per Year.
" 50 Cents " month.
" 33 1/3 " " 20 Days.
" 16 2/3 " " 10 "
" 8 1/3 " " 5 "
" 1 2/3 " " 1 Day.

REVERSE.

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in the midst of the war the honor of the country must be sustained. Finally, with some slight amendments, the bill passed on January 27, 1847, by a vote of 43 to 2, and became a law on the following day.

Notes issued under this act were not to be of a less denomination than $50, and were receivable in payment of public dues, including duties on imports, and were redeemable at the expiration of one or two years, and the interest was to cease at the expiration of sixty days' notice. On page 67 is the form of a 6 per cent. $100 note issued under this act. (*A photo-lithograph of this note is given at end of the volume.*)

The principal of the notes was fundable into 6 per cent. bonds, redeemable after December 30, 1867, and this privilege was extended to the holders of notes issued under previous acts. Reissues were authorized, but the amount of stock and notes, at any one time, was not to exceed twenty-three millions. The right to issue treasury notes, under the act of July 22, 1846, was extended by the fifteenth section to the period fixed by these acts, and on the same terms, but the issue, under this section, was not to exceed five millions. $12,371,150 of these notes were issued previous to July 1, 1847, and $11,956,950 additional notes were issued during the next fiscal year. The whole amount of issues and reissues under the act was $26,122,100, all of which were either sold or paid to public creditors at par. The rate of interest of the notes was $5\frac{2}{3}$ and 6 per cent., and United States 6 per cent. bonds, chiefly for the purpose of redeeming these notes, were issued under the same act, amounting to $28,230,350.

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CHAPTER VIII.

TREASURY NOTES OF THE BUCHANAN ADMINISTRATION.

THE treasury notes issued under the act of January 28, 1847, were all retired, with the exception of about $200,000, previous to July 1, 1850, and no additional treasury notes were authorized, until the passage of the act of December 23, 1857. Secretary Cobb, in his report for that year, estimated that the receipts would exceed the expenditures, but said that the financial revulsion which had caused the banks to suspend specie payment in October of that year, had also caused a large part of the dutiable merchandise to be stored without payment of duty, where it could remain under the law for three years, although it was probable that a considerable portion would be withdrawn and the duties paid previous to that date. Meanwhile, means should be provided for meeting the demands upon the treasury, and he recommended that authority should be given to issue treasury notes "for an amount not exceeding twenty millions of dollars, and payable within a limited time, and carry a specified rate of interest." A bill, in accordance with the suggestion of the Secretary, was introduced into both Houses of Congress on December 18, 1857. It passed the Senate on the following day, by a vote of 31 to 18, and the House on the 22d by a vote of 118 to 86, and was approved on the following day and became a law. The bill provided for the issue of notes payable in one year

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from date of issue, to an amount not exceeding twenty millions. $6,000,000 were to be issued at a rate of interest not exceeding 6 per cent. The remainder was to be sold after public advertisement of not less than thirty days, at their par value, for specie, to the bidders offering to take them at the lowest rate of interest, not exceeding 6 per cent. The interest upon the notes was to expire, after maturity of notes, upon sixty days' notice from the Secretary, of his readiness to redeem such notes; they were to be issued in denominations of not less than $100, and were to be signed by the Treasurer and Register; they were receivable in payment of all dues to the United States. The whole amount authorized was issued, and the amount of issues and reissues, in all, was $52,778,900. The interest upon these notes was as follows: $6,323,600 at 3 per cent.; $985,000 at from 3½ to 4 per cent.; $688,000 at 4¼ per cent.; 10,055,700 at 4½ per cent.; $4,532,500 at 4¾ per cent.; $7,533,900 at 5 per cent.; $8,204,500 at 5½ per cent.; $3,514,100 at 5¾ per cent.; and $10,941,600 at 6 per cent. On page 73 is the form of a 3 per cent. $100 note issued under this act.

The following table exhibits the different kinds of treasury notes outstanding which were issued from the organization of the Government to the date of the passage of the act of March 2, 1861, and which had not been presented for payment on January 1, 1885:

Notes.	Act.	Rate of Interest.	Principal.	Interest.
Treasury Notes, 1846.	Prior to 1846	1 mill to 6 per cent.	$82,525	$2,688.06
Treasury Notes, 1846.	July 22, 1846	1 mill to 6 per cent.	5,900	200.60
Treasury Notes, 1847.	Jan. 28, 1847	6 per cent.	950	57.00
Treasury Notes, 1857.	Dec. 23, 1857	3 to 6 per cent.	1,700	99.00

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The total public debt on June 20, 1860, was $64,769,703.08. The outstanding treasury notes issued under act of June 23, 1857, were $19,690,500. The amount of treasury notes outstanding, issued under acts previous to that date, was $105,111.64. The act of June 22, 1860, authorized a loan of twenty-one millions, at a rate of interest not exceeding 6 per cent., to be reimbursed within a period not more than twenty years, and not less than ten years. The money was to be used in the redemption of treasury notes, and to replace any amount paid to the treasurer in such notes for public dues. Under this authority, proposals were invited by Secretary Cobb, on September 8, 1860, for ten millions of this loan, which amount was "ample to meet all the treasury notes that would fall due before January 1, 1861." In his report for December 4, 1860, he says: "The rate of interest was fixed at 5 per centum per annum, under the conviction that the loan could be readily negotiated at that rate, for, at that time, the 5 per cent. stock of the United States was selling in the market at the premium of 3 per cent. The result realized this just expectation, and the whole amount offered was taken, either at par or a small premium." Before, however, the time had arrived for payment on the part of the bidders, political complications arose, which affected the credit of the Government so unfavorably that the amount realized was but $7,022,000, the subscribers of $2,978,000 having failed to make good their subscriptions. The Secretary stated that, in the present condition of the country, capitalists were unwilling to invest in United States stock at par, and recommended a repeal of so much of the act of June 22, 1860, as authorized

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C. *One Year After Date* C.

The United States

*Promise to pay to the order of*_____

One Hundred Dollars,

with interest at the rate of Three per centum per annum.

Washington, 11 March, 1858.

100 100

Countersigned,

F. Bigger,
Register of the U. S. Treasury.

Saml. Casey,
Treasurer of the United States.

Receivable in payment of all Public Dues.

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the issue of the additional stock, and asked for authority for the issue of treasury notes for the same amount, "to be negotiated at such rates as will command the confidence of the country." He recommended that the public lands be unconditionally pledged for the ultimate redemption of all the treasury notes which it may become necessary to issue, and suggested, "that there should always exist in the Department power to issue treasury notes for a limited amount, under the direction of the President, to meet unforeseen contingencies. It is a power which can never be abused, as the amount realized from such source can only be used to meet lawful demands upon the treasury. No Secretary of the Treasury or President would ever exercise it, unless compelled to do so by the exigencies of the public service. On the other hand, it would enable the Government to meet, without embarrassment, those sudden revulsions to which the country is always liable, and which cannot always be anticipated. I have already stated that provision should be made at once to relieve the treasury from its present embarrassment, produced by the causes referred to. To do this, Congress should authorize the issue of an additional amount of treasury notes, not less than ten millions of dollars; with this means the Department would be enabled to meet all lawful demands upon it for the present. The extent of the financial crisis, through which the country is now passing, cannot now be determined, and until it is better known, no policy can be recommended of a permanent character."

Secretary Cobb resigned on December 10th, but the act of December 17, 1860, was passed in compliance with the suggestions contained in his report. The pledge

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of the proceeds of the public land was not given in the act, and one of the reasons for withholding such legislation was, that it would interfere with the passage of the homestead bill which, was then under consideration. The act authorized the issue of ten millions of treasury notes in denominations of not less than $50, redeemable in one year from the date of issue, with interest at the rate of 6 per cent., but the Secretary was authorized to issue such notes after advertisement at the lowest rate of interest offered. Of these notes, five millions were offered to subscribers. The bids were opened December 28th, and only $500,000 were taken at 12 per cent. It was important to negotiate the loan, in order to meet the interest on Government bonds upon January 1st. The remainder of the loan was subscribed by the banks in New York, previous to that date, at 12 per cent.

Gen. John A. Dix was appointed Secretary of the Treasury on January 11th, and bids for the remaining $5,000,000 were opened on the 19th, and the notes awarded at the average rate of 10⅝ per cent., as follows:

$10,000	at 8¾	per cent.
30,000	9	"
10,000	9¼	"
140,000	9½	"
67,000	9¾	"
721,000	10	"
265,000	10¼	"
543,000	10½	"
1,267,000	10¾	"
1,947,000	11	"
Total..$5,000,000	Average, 10⅝	per cent.

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The whole ten millions were issued, redeemable at the expiration of one year from date, bearing interest as follows: $70,200 at 6 per cent.; $384,500 at rates varying from 6 to 10 per cent.; $1,027,500 at 10 per cent.; $3,688,700 at rates from 10 to 12 per cent.; and $4,840,000 at 12 per cent. Additional offers bearing interest, ranging from 15 to 36 per cent., were declined. The amount of treasury notes outstanding on December 1, 1860, previous to the passage of this act, was $14,599,700, of which $42,600 was payable in 1859, $3,133,400 in 1860, and $11,423,700 in 1861. Of these notes, $8,684,200 bore interest at 6 per cent., and the remainder at lower rates.

Secretary Dix, in a letter to the Chairman of the Committee of Ways and Means, dated January 18, 1861, says: "Within the last few days the amount of over-due treasury notes presented for redemption has exceeded the power of the Treasurer to place drafts for payment on the Assistant Treasurer at New York, where the holders desire the remittances to be made; and an accumulation of warrants, to the amount of about $433,000, has accrued on this account in the Treasurer's hands, which he has been unable to pay." He also says: "That notice issued on the 18th ultimo invited proposals for the exchange of five millions of dollars for treasury notes, and offers at 12 per cent. or less were made only to the amount of $1,831,000; offers to exchange $465,000 for notes bearing interest at rates varying from 18 to 36 per cent. were also received. The offers at 12 per cent. and less were accepted; those above that rate were rejected. The remainder of the five millions offered was soon thereafter taken at 12 per cent., and the whole amount

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was pledged to the payment of over-due treasury notes and other pressing demands on the treasury. * * During the last quarter, about eight millions of treasury notes were redeemed, which, with the two and one-half millions redeemed since the first instant, make ten and a half millions. The amount received from the loan, a small fraction above seven millions, threw upward of three and a half millions of these notes on the other resources of the treasury for redemption. This is one of the principal causes of the delay and difficulty which have recently existed in providing for other demands of public service." So low had the credit of the Government fallen, through the political agitations and troubles just previous to the War of the Rebellion, that he closed his communication by calling attention to the fact, that, "there are deposited with twenty-six of the States, for safe keeping, over twenty-eight millions of dollars belonging to the United States, for the payment of which the promise of these States is pledged by written instruments on file in this Department. The annual statement of receipts and expenditures for the year ending June 30, 1860, represents this amount as part of the 'balance in the treasury' on that day. * * I refer to this final resource as an available one, should the public exigencies demand it. It is not doubted that the greater portion of the amount so deposited would be promptly and cheerfully paid should an exigency arise involving the public honor or safety. If, instead of calling for these deposits, it should be deemed advisable to pledge them for the repayment of any money the Government might find it necessary to borrow, loans contracted on such a basis of security, superadding to the plighted

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faith of the United States that of the individual States, could hardly fail to be acceptable to capitalists."

During the following month the act of February 8, 1861, was passed, which authorized a loan not exceeding twenty-five millions of 6 per cent. bonds, the avails to be used in the payment of current expenses, for the redemption of outstanding treasury notes, and to replace in the treasury such amounts as had been paid in treasury notes. Of this loan, bearing 6 per cent. interest, and having twenty years to run, $18,415,000 was issued, at an aggregate discount of $2,019,776, or an average rate of $83.03 for $100. In less than a month after the passage of this act providing for the payment of the treasury notes outstanding, the act of March 2, 1861, was passed, which authorized a loan of ten millions at 6 per cent., redeemable upon three months' notice, after July 1, 1871, payable July 1, 1881, or, instead thereof, the issue of $10,000,000 of new notes in denominations of not less than $50, bearing interest at the rate of 6 per cent. per annum, payable semi-annually, receivable in payment of all debts due the United States, including customs duties, and redeemable at pleasure, within two years from the passage of the act. The same act largely increased the duties on imports, and authorized the substitution of treasury notes for the whole or a part of the loans previously authorized. Under this act, $35,364,450 in all, of treasury notes, were issued, of which $22,468,100 were redeemable in two years, and $12,896,350 redeemable in sixty days after date; and a considerable portion of these notes were paid out to creditors. A new series of plates was prepared for each of the issues of treasury notes under the acts of January 28, 1847, December 23, 1857, and March 2, 1861. The size of the latter note was $7\frac{1}{2}$ by $3\frac{5}{8}$ inches.

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CHAPTER IX.

TREASURY NOTES OF THE PERIOD OF THE CIVIL WAR.

General Dix was succeeded by Secretary Chase on March 7, 1861. The great increase of import duties, imposed by the act of March 2d, had caused the bonds of the Government to advance in the market, and it seemed to be a favorable time to offer the remainder of the bonds authorized by the act of February 8, 1861. Bids for eight millions of the bonds were opened on April 2d. Offers at from 94 to par were received for $3,099,000, and 93½ for the remainder of the loans. All bids below 94 were rejected. In the midst of these negotiations it became known that arrangements were being made to send an additional force for the relief of Fort Sumter. No additional bonds were sold until May 31st, when $7,310,000 were sold at an average rate of $85.34 for $100. In place of bonds, five millions of treasury notes were offered, and the bids opened on April 11th amounted to only one million; but shortly thereafter the whole amount offered was taken. On the following page is the form of a $50 note issued under the act of March 2, 1861. The United States 6 per cent. bonds were selling in the market at 83, and money at call was worth from 4 to 5 per cent.; but the treasury notes bearing 6 per cent. interest could be held and used or sold

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50 *Issued in pursuance of* 50

an Act of Congress approved

Two Years *March 2, 1861.* *After Date*

The United States

Promise to pay to the order of.....

No. 34953 C *Fifty Dollars,* *No. 34953 C*

with interest at six per cent. Payable 1st Jan. and 1st July.

Washington, Aug. 7, 1861.

Convertible into

Bonds of the United States.

Countersigned,

G. Luff,

for the Register of the Treasury.

H. G. Root,

for the Treasurer of the United States.

Receivable in payment of all Public Dues.

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at a profit for the purpose of paying duties. Additional treasury notes of the same kind, as has been seen, were subsequently sold, amounting, in all, to more than thirty-five millions, at rates ranging from par to $1\frac{87}{100}$ per cent. premium.

Civil war was inaugurated by the attack on Fort Sumter on April 12th. The fort surrendered on April 14th, and on the following day President Lincoln issued a call for seventy-five thousand soldiers. The Southern States were declared blockaded. Seven of these States had, by ordinances, publicly declared their secession from the Union, and their defiance of the national authority, and a convention at Montgomery, Alabama, had organized a new government, under the name of "The Confederate States of America." Massachusetts soldiers, on their way to Washington, were attacked by a mob in Baltimore. In the month of May the Confederate capital was removed to Richmond; North Carolina and Arkansas seceded, and the Union army crossed the Potomac into Virginia, and took possession of Alexandria and Arlington Heights. In June, Tennessee passed an ordinance of secession, and General Butler was defeated at Big Bethel. The two-year treasury notes which had been recently issued at par were at $2\frac{1}{2}$ per cent. discount; and the Government, instead of disposing of the notes, borrowed five millions at sixty days upon them as collateral security. During the following month the disastrous results of the first battle of Bull Run startled the entire country. The Union army, defeated, fell back upon Washington, and the capital of the country was believed to be in danger. Two days thereafter, President Lincoln called for five hundred thousand three-year

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volunteers. An extra session of Congress had been called for July 4, 1861, and on that day, amid events like these, Secretary Chase transmitted his first report to Congress, which recommended measures to provide the means for continuing a civil war which proved in magnitude to be unequalled in the history of nations.

Specie payments were suspended on December 28, 1861. The war was carried on chiefly by the use of treasury notes as a circulating medium. The purchasing power of these notes rapidly declined. Prices of all kinds advanced rapidly, and particularly the prices of articles most needed for the supply of the army. The expenditures of the Government during the four years of the war were vastly increased beyond the amount which would have been necessary if the war could have been conducted upon the gold standard, instead of upon the fluctuating standard of the legal tender paper dollar.

Never was a great national debt contracted so rapidly. In 1835, as has been seen, the country was entirely out of debt. General Lee surrendered at Appomattox, on April 9, 1865; which date was four years, lacking five days, after Fort Sumter had surrendered to the enemy. On the first day of July, 1861, the debt was 90 millions; at the close of that fiscal year it had reached 524 millions; at the end of the succeeding year, it was considerably more than twice that amount, being on July 1, 1863, $1,119,772,138. During the following year it increased nearly 700 millions. For the next nine months, to the close of the war, it increased at the rate of about sixty millions a month. An immense amount of obligations against the Government were presented, after the close of the war, and for the five months thereafter the

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ascertained debt increased at the rate of three millions a day. The cost of conducting the war, after it was once fully inaugurated, was scarcely at any time less than thirty millions a month. At many times it far exceeded that amount; sometimes it was not less than ninety millions a month, and the average expenses of the war, from the date of its inception to its conclusion, may be said to have been not less than two millions each day.

The public debt reached its maximum on August 31, 1865, at which day it amounted to $2,845,907,626.56. Of this amount, $1,109,568,191 was in funded debt; $1,503,020 was debt which had matured; and $2,111,000 was in suspended requisitions. The remainder was as follows:

United States legal tender notes	$433,160,569 00
Compound interest legal tender notes	217,024,160 00
Five per cent. legal tender notes	33,954,230 00
Seven-thirty notes	830,000,000 00
Fractional currency	26,344,742 51
Temporary loans	107,148,713 16
Certificates of indebtedness	85,093,000 00
Total	$1,732,725,414 67

There were more than 684 millions of these obligations which were a legal tender, of which 217 millions were bearing compound interest at the rate of 6 per cent.; 830 millions were in treasury notes, bearing interest at the rate of $7\frac{3}{10}$ per cent. per annum. There were $1,540,483,701 of treasury notes, either payable on demand or bearing interest. If the temporary loans, which were payable in thirty days from the time of deposit, after notice of ten days, and the certificates of indebtedness,

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which bore interest at 6 per cent., payable one year after date, or earlier, at the option of the Government, are included with the treasury notes, the whole would amount to considerably more than three-fifths of the whole public debt of the country.

Secretary Chase, in his report, estimated the whole sum required for the fiscal year to be not less than 318 millions, of which 215 millions would be required for the war and naval service; more than twelve millions ($12,639,861.64) to pay treasury notes due and to become due, and nine millions to pay interest upon the proposed new debt. He was of the opinion that not less than eighty millions should be provided by taxation, and 240 millions obtained by loans. The principal part of the revenue was to be obtained from the tariff, the remainder by a system of direct taxation or internal duties. Six per cent. bonds, amounting to $18,415,000, had already been sold at from par to $85.34 for $100, and treasury notes bearing interest at 6 per cent. had been paid to creditors. He considered that "in a contest for national existence and the sovereignty of the people, it is eminently proper that the appeal for the means of prosecuting it with energy to a speedy and successful issue should be made, in the first instance at least, to the people themselves."

Among other recommendations, he proposed a loan of 100 millions, to be issued in the form of treasury notes, or exchequer bills, bearing interest at the rate of $7\frac{3}{10}$ per cent., to be paid semi-annually, and redeemable at pleasure, after three years from date. The interest at this rate was suggested, because it was liberal to the subscribers, convenient for calculation, and, under existing cir-

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cumstances, a fair rate for the Government. The rate would be convenient for calculation; for, the interest being equal to one per cent a day on $50, two cents a day on $100, ten cents on $500, twenty cents on $1,000, and one dollar on $5,000, it would be only necessary to consider the number of days since the date of the note, to determine, at the close, the amount due on it. It was proposed to issue these notes in sums of fifty, one hundred, five hundred, one thousand, and five thousand dollars, with the amount of interest for specified periods engraved on the back of each note, and the facility thus secured to the holder of determining the exact amount of interest, it was thought, would enhance its value. "While the rate proposed is thus liberal and convenient, the Secretary regards it also as, under existing circumstances, fair and equitable to the Government. The bonds of the United States, bearing an interest of 6 per cent., and redeemable twenty years after date, cannot be disposed of at current market rates, so that the interest on the amount realized will not exceed $7\frac{3}{10}$ per cent.; nor is there any reason to believe that treasury notes, bearing an interest of 6 per cent., receivable for public dues and convertible into twenty years' 6 per cent. bonds, can be disposed of in any large amounts, so that the interest on the sum realized will not fall much, if at all, short of the rate proposed. For the difference of interest, if any, between such notes and those of the proposed national loan, the Secretary thinks that the absence of the feature of receivability for public dues in the latter is a sufficient compensation." He also proposed notes of small denominations, ten, twenty, and twenty-five dollars, payable one year from date, to an amount not exceeding fifty mil-

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lions, bearing interest at the rate of $3\frac{65}{100}$ per cent., to be exchanged for the other form of treasury notes, bearing interest at $7\frac{3}{10}$, or, if more convenient, made redeemable in coin, on demand, without interest. "The greatest care," he said, "will, however, be requisite to prevent the degradation of such issues into an irredeemable paper currency, than which no more certainly fatal expedient for impoverishing the masses and discrediting the Government of any country can well be devised."

Treasury notes authorized by the acts of June 30, 1812, February 24, 1815, and three intervening acts, bore interest, as recommended by Secretary Gallatin, as has been seen, at the rate of $5\frac{2}{5}$ per cent. a year, and were receivable in payment of all duties and taxes laid by the authority of the United States, and for all public lands sold by said authority; and when so received, interest was to be computed at the rate of "one cent and one-half a cent per day" on every one hundred dollars of principal, each month being reckoned as thirty days. It is probable that the proposition for the issue of the seven-thirty notes was obtained from this act, for a substitute was proposed for the legal tender act which passed the House of Representatives February 6, 1862, which contained a section providing for the issue of transferable certificates bearing interest at the rate of $5\frac{2}{5}$ per cent. per annum.

These recommendations of the Secretary were embodied in the acts of July 17 and August 5, 1861. The first was passed by nearly the unanimous vote of the House, only five votes (one from Kentucky, two from Missouri, one from Ohio, and one from New York) having been against it. It authorized the Secretary to bor-

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row 250 millions, either in twenty-year treasury notes, with interest not exceeding 7 per cent., or in seven-thirty three-year treasury notes, and to issue demand notes, bearing no interest, and receivable for public dues. These latter notes were limited to fifty millions, and to denominations of not less than ten dollars.. But the act of August 5th authorized the issue of five-dollar notes; also twenty-year 6 per cent. bonds for the amount of the seven-thirty notes issued, which bonds were to be used only in exchange, or for the purpose of funding such notes. Under these acts, nearly 140 millions of seven-thirty notes were issued, and sixty millions of demand notes, without interest; ten millions of these notes having been authorized by the act of February 12, 1862.

The first demand notes were issued in August, and paid for salaries at Washington. They were received with reluctance, and the merchants and shop-keepers endeavored to discredit them. Railroad corporations refused them in payment of fares and freight; and leading banks in the city of New York refused to receive them except on special deposit. The Secretary and other officers of the treasury signed a paper agreeing to accept them in payment of salaries. A circular was issued to the various assistant treasurers, stating that treasury notes of the denominations of five, ten, and twenty dollars had been, and will continue to be issued, redeemable in coin on demand in Boston, New York, Philadelphia, St. Louis, and Cincinnati. Gen. Scott also issued a circular on September 3, 1861, announcing to the army, "that the Treasury Department, to meet future payments to the troops, is about to supply, besides coin, treasury notes in five, ten, and twenty dollars, as

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good as gold in all banks and Government offices throughout the United States, and most convenient for transmission by mail from the officers and men to their families at home." Of these notes $24,550,325 were issued before December 1st, and $33,460,000 were in circulation at the time of the suspension of specie payment on December 28th. The whole amount authorized was issued prior to April 1, 1862. On page 91 is the form of the demand note, the size of which was precisely the same as the greenback, now in circulation. Notwithstanding the circular of the Secretary, it became necessary to use the available coin in payment of the interest upon the public debt, and there was at times some difficulty in redeeming the notes promptly in gold.

At a meeting of the associated banks in the city of New York, in January, 1862, it was resolved, "That before we receive such notes, we must require that such legal provision be made by Congress as shall insure their speedy redemption, and that a committee of the association be appointed to consider the subject and report on it at an adjourned meeting." The notes were receivable for duties, and soon obtained good credit. After the suspension of specie payment, efforts were made to retire them as rapidly as possible, for as they were receivable for duties, they embarrassed the Government in providing for the gold interest upon the public debt. On July 1, 1863, more than fifty-six millions had been retired, and a much larger amount of legal tender notes had been placed in circulation. The demand notes were not, by the terms of the law, made payable in gold, but as they were authorized prior to the suspension of specie payment, and proclaimed as payable in coin by the

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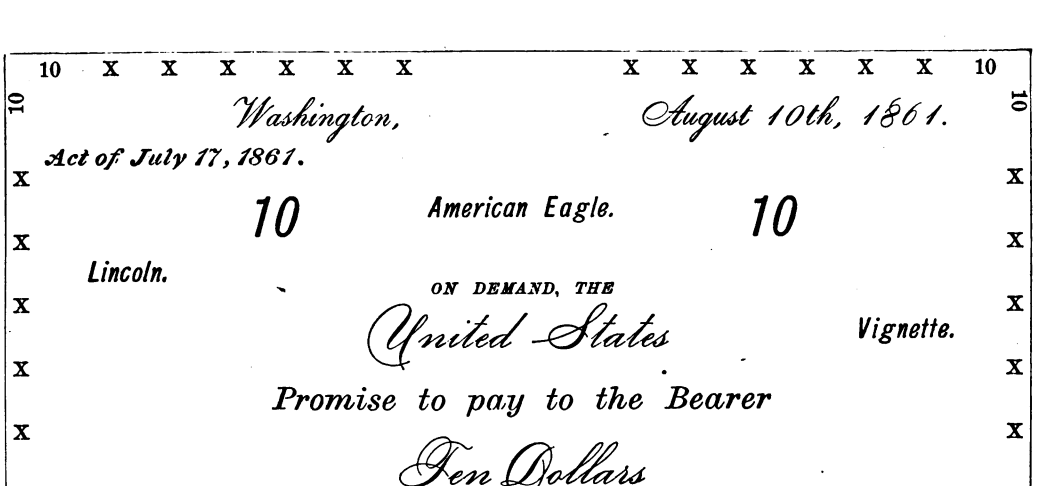

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circular of the Secretary, they were considered so payable, and, after the suspension of specie payment, were quoted at times at about the same premium for legal-tender notes as gold.

Interest upon the first issue of the seven-thirty notes was paid in gold. These notes were fundable into twenty-year 6 per cent. bonds of 1881, and but few were presented for payment. The amount redeemed in money to November 1, 1864, was only $63,500, while the whole amount converted into bonds to that date was $125,864,900.[1] The seven-thirty loan was successfully negotiated through the associated banks of New York, who, jointly with the banks of Boston and Philadelphia, made a contract with the Secretary on August 15, 1861, for the purchase of Government securities to the amount of 150 millions, in three different instalments. The total amount taken by the New York banks was 105 millions. Whenever subscriptions were made, 10 per cent. was paid to the Assistant Treasurers in New York, Boston, and Philadelphia, and the remainder was placed to the credit of the United States on the books of the banks subscribing. The arrangement of the associated banks among themselves was to issue certificates to each subscriber, stating the amount so subscribed, and placed to the credit of the Government; and, as such deposits were withdrawn, or paid into the treasury, seven-thirty notes were issued for the same amount to the subscribers respectively. An immediate issue was to be made of seven-thirty treasury notes, dated August 15, 1861, to the extent of fifty millions, bearing interest from that

[1] Finance Report, 1864, p. 10.

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date. The associated banks were to take jointly this amount at par, with the privilege of fifty millions on October 15th, and fifty millions on December 15th; the banks giving their decision on the first days of these months. It was understood that, if the whole amount should be taken, no other Government stock or treasury notes, except demand notes, should be negotiated or paid out by the treasury until February 1, 1862. The details of this negotiation, which was perhaps the most important one during the war, are given in the *Bankers' Magazine* for September, 1861, and August, 1862.

The report of June 12, 1862, of the Loan Committee of the Associated Banks of New York, states that, at the time the negotiation was made, "the credit of the Government had become impaired to such a degree that a large loan could not be obtained in any ordinary way, nor even a small temporary loan, except for a very short period at a high rate of interest. Men's hearts failed them; the rebellion was on so large a scale, and had so unexpectedly broken out and raged with such fury, that to subdue it seemed to most persons to be impossible. Then it was, after careful deliberation and consultation with the Secretary, that the banks decided it to be wise for them to depart from their usual legitimate business, and sustain the Government credit, and stand or fall with it. This act restored the public confidence, and was the highest indorsement of the public credit that could then have been given. * * When the banks agreed to advance this large amount to the Government, they did so without hope or expectation of profit from it, and they earnestly sought to obtain from the Government the assurance that they should be indemnified from loss.

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It was not until five months after taking the first loan, and two months after taking the third, in the month of January last, that there was any reason to expect the securities to command in the market a price higher than that at which they had been taken. * * Much doubt was expressed, even by our most experienced bankers and financiers, when the contract was entered into, of the ability of the banks fo fulfil it. It has been fulfilled by them to the letter, and has proven of more value to the country than can be estimated. As fortunately as unexpectedly, it has resulted profitably for the associates, and has probably enabled them to employ their means to nearly as much advantage as would have been done but for the political disturbances of the country."

Secretary Chase, in his report for December 9, 1861, thus refers to this negotiation: "Representatives from the banking institutions of the three cities, responding to his invitation, met him for consultation in New York, and after full conference, agreed to unite as associates in moneyed support to the Government, and to subscribe at once a loan of fifty millions of dollars, of which five millions were to be paid immediately to the Assistant Treasurers, in coin, and the residue, also in coin, as needed for disbursement. The Secretary, on his part, agreed to issue three-year seven-thirty bonds, or treasury notes, bearing even date with the subscription, and of equal amount; to cause books of subscription to the national loan to be immediately opened; to reimburse the advances of the banks, as far as practicable, from this national subscription; and to deliver to them seven-thirty bonds, or treasury notes, for the amount not thus

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reimbursed. It was further understood, that the Secretary of the Treasury should issue a limited amount of United States notes, payable on demand, in aid of the operations of the Treasury, and that the associated institutions, when the first advance of fifty millions should be expended, would, if practicable, make another, and, when that should be exhausted, still another advance to the Government of the same amount, and on similar terms. * * All these objects were happily accomplished. Fifty millions of dollars were immediately advanced by the banks. The Secretary caused books of subscription to be opened throughout the country, and the people subscribed freely to the loan. The amounts thus subscribed were reimbursed to the banks, and the sum reimbursed, though then covering but little more than half the amount, enabled those institutions, when a second loan was required, to make a second advance of $50,000,000. Thus, two loans, of $50,000,000 each, have been negotiated for three-year seven-thirty bonds, at par. The first of these loans was negotiated, and the first issue of bonds bears date, August 19, the second October 1, 1861."

On November 16th, a third loan was negotiated with the associated institutions, under the seventh section of the act of August 5, 1861, the Secretary agreeing to issue to them fifty millions of dollars in 6 per cent. bonds, at a rate equivalent to par, for bonds bearing 7 per cent. interest, authorized by the act of July 17, 1861.

The following table gives quotations of United States 5 and 6 per cent. bonds, of treasury notes and of gold, at the dates stated, compiled from tables in *Hunt's Merchants' Magazine* for 1862–63–64.

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YEARS AND MONTHS.	6's, 1861.		5's, 1874.	7-30's 3 years.	1 year certificates old.	Demand notes.	Gold.
	Registered.	Coupon.					
1862.							
February 5.....	88	89	78⅛	....	...	....	....
March 1.....	93⅛	92⅛	85⅛	99⅛	....	....	102⅛
April 1.....	93	93	87	99¾	96¾	....	102
May 10.....	103⅛	103	94	104	99⅞	100¼	103⅜
June 7.....	103	106	96	106¼	100¼	101	104⅛
July 5.....	100¼	100⅛	95	102	98⅜	105¼	109⅞
August 2.....	98¼	98⅛	85⅛	102⅛	98¼	105¼	115¼
September 6.....	99¾	99¾	88¼	103¼	99	108	119¼
October 4.....	104⅛	104⅛	94	105¼	94	122⅝	123
November 1.....	104	104¼	93¼	105¼	99¼	126¼	131¼
December 6.....	101	104	91⅜	104	97⅛	125	132
1863.							
January 3.....	96⅛	98	88⅜	102¼	96¼	129	134⅛
February 7.....	92	93¾	85⅛	102	94	155	157⅞
March 7	99¾	100¾	94¾	105	98⅛	153	155⅛
April 4.....	104⅛	105	97¼	104⅝	99	....	155¼
						1 Year Certificates New.	
May 2.....	105⅛	106⅛	97⅛	106⅛	102	99⅛	150⅛
June 6.....	104	108¼	99	107	101¾	97¼	145⅜
July 11.....	104¼	105	97½	106	100⅝	98¾	132½
August 1.....	104⅞	105¼	96⅛	106⅛	101	99½	129¾
September 5.....	106	106	95	106	100⅛	99⅜	131¾
October 3.....	107	106¾	95	106¼	101¾	99⅜	143⅛
November 7.....	108	109	98	107	101½	98⅞	147⅜
November 27.....	108	100	98	106¼	101⅛	98	145⅛
1864.							
January 2.....	104¾	105⅛	96	106⅛	101⅛	97¾	152
February 6.....	107¾	107⅛	100	108	102¾	98¾	159⅛
March 5.....	111¾	111	100	111	103¼	99½	161⅞
April 2.....	111	110	100	111	....	99½	166¾
May 7.....	113	113	102	109½	....	98⅛	172⅞
June 4.....	109	113¼	102	109¾	....	98	191
July 11.....	102¾	102¾	102	103½	....	94¼	285
August 6.....	106¼	105¼	99	107⅛	....	94¼	261¾
September 3.....	107	107	100	111	....	93¾	243⅛
October 1.....	106	106½	103	110¾	....	94¾	193¾
November 5.....	107½	106½	100	106¾	....	95½	214¾
December 12.....	108⅛	108⅛	100	120	....	97¾	237½

About three years after the passage of the act authorizing the first issue of seven-thirty notes, another act was passed, on June 30, 1864, authorizing 200 millions of similar notes, and a subsequent act of March 3, 1865, authorized 600 millions in addition, and under this act the whole amount (including $29,992,500 of reissues), was

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issued. Of this amount forty-four millions were in denominations of fifty dollars; 137 millions, in one hundreds; 228 millions, in five hundreds; 370 millions, in one thousands; and about fifty millions, in five thousands. They were issued in three series, dated August 15, 1864, June 15, 1865, and July 15, 1865. These notes, like those that preceded them, were fundable into 6 per cent. bonds—the former into eighty-ones, and the latter into five-twenties—and this fact was printed upon the reverse of each note. The 800 millions last issued were payable, principal and interest, in lawful money. More than twenty millions, which were authorized by the act of June 20, 1864, were paid to the soldiers direct. Of the 600 millions, authorized by the act of March 3, 1865, seventy millions were issued during that month, and the whole remainder was taken during the following four months.

Secretary McCulloch, in his report for December 4, 1865, thus refers to the negotiations and issue of the remaining 530 millions of these notes: "Upon the capture of Richmond, and the surrender of the Confederate armies, it became apparent that there would be an early disbanding of the forces of the United States, and consequently heavy requisitions from the War Department for transportation and payment of the army, including bounties. As it was important that these requisitions should be promptly met, and especially important that not a soldier should remain in the service a single day for want of means to pay him, the Secretary perceived the necessity of realizing as speedily as possible the amount—$530,000,000—still authorized to be borrowed under this act. The seven and three-tenths notes had proved to be a popular loan, and although a

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security on longer time and lower interest would have been more advantageous to the Government, the Secretary considered it advisable, under the circumstances, to continue to offer these notes to the public, and to avail himself, as his immediate predecessors had done, of the services of Jay Cooke, Esq., in the sale of them. The result was in the highest degree satisfactory. By the admirable skill and energy of the agent, and the hearty co-operation of the national banks, these notes were distributed in every part of the Northern and some parts of the Southern States, and placed within the reach of every person desiring to invest in them. No loan ever offered in the United States, notwithstanding the large amount of Government securities previously taken by the people, was so promptly subscribed for as this. Before the first of August the entire amount of $530,000,000 had been taken, and the Secretary had the unexpected satisfaction of being able, with the receipts from customs and internal revenue and a small increase of the temporary loan, to meet all the requisitions upon the treasury."

On page 101 is the form of the seven-thirty note issued under the act of March 3, 1865, with one coupon attached.

The whole half year's interest was payable with the note, and there were five coupons upon the right end of the note. The size of the note was $3\frac{3}{4}$ by $11\frac{1}{4}$ inches, including the coupons, which were $3\frac{1}{4}$ inches in width. On the reverse was printed these words: "Pay to bearer. At maturity convertible at the option of the holder into bonds redeemable at the pleasure of the Government, at any time after five years, and payable twenty years from

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July 15, 1868, with interest at 6 per cent. per annum, payable semi-annually in coin."

During the month of July, 1862, gold was at a premium for legal tender notes of from 10 to 15 per cent., and demand notes, which were receivable for customs, at a premium of about 8 per cent. The subsidiary silver coinage authorized by the act of February 21, 1853, was about 7 per cent. less in intrinsic value than the silver dollar, and this difference in weight was authorized, so that it might be retained in the country for purposes of change. This silver coin soon began to disappear. Considerable amounts were hoarded in the North and South, and larger amounts were exported to Canada and South America; and a premium of from 10 to 12 per cent. was offered for small amounts by business men who desired it for convenience in making change. Many individuals as well as corporations issued small obligations, or "shinplasters," such as had been issued in 1812 and 1837. Postage stamps were used to a considerable extent for purposes of change. The Postmaster-General, in his report of December, 1862, says: "In the first quarter of the current year, ending September 20th, the number of stamps issued to postmasters was one hundred and four millions; there were calls for about two hundred millions, which would have been nearly sufficient to meet the usual demand for a year. This extraordinary demand arose from the temporary use of these stamps as a currency for the public in lieu of the smaller denominations of specie, and ceased with the introduction of the so-called 'postal currency.'"

On July 17, 1862, an act was passed which authorized the issue of "postage and other stamps of the United

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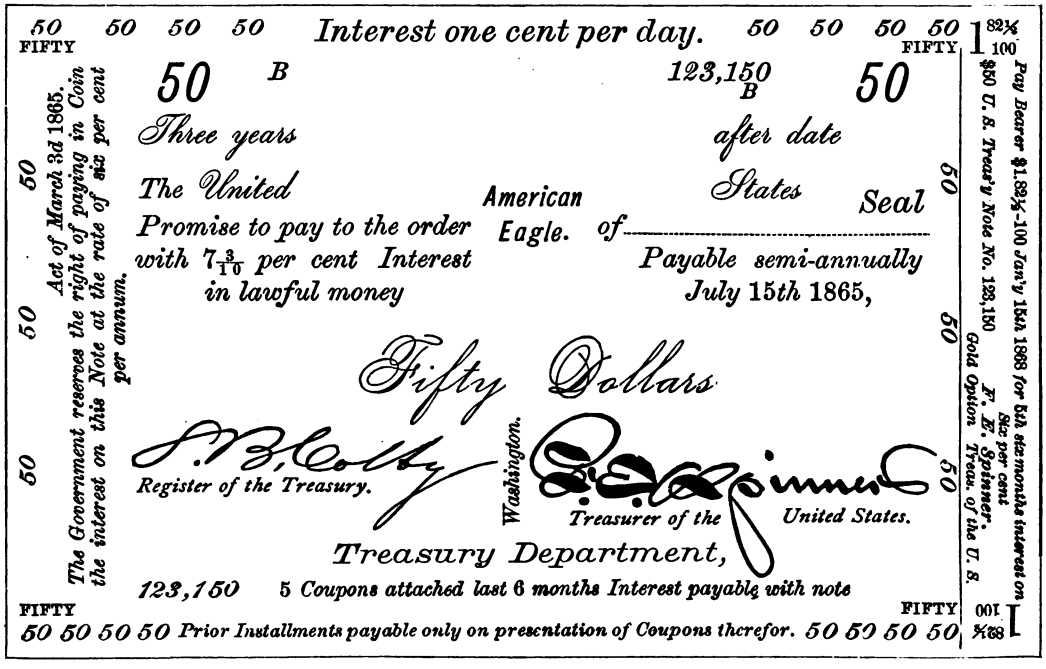
50 50 50 50 Interest one cent per day. 50 50 50 50
FIFTY
FIFTY
50 B
123,150 B 50
Three years
after date
The United
American
States
Seal
Promise to pay to the order
Eagle. of
with 7 3/10 per cent Interest
Payable semi-annually
in lawful money
July 15th 1865,
Fifty Dollars
Act of March 3d 1865.
The Government reserves the right of paying in Coin the interest on this Note at the rate of six per cent per annum.
Register of the Treasury.
Washington.
Treasurer of the United States.
Treasury Department,
123,150 5 Coupons attached last 6 months Interest payable with note
FIFTY
FIFTY
50 50 50 50 Prior Installments payable only on presentation of Coupons therefor. 50 50 50 50
1 82 1/4 100
Pay Bearer $1.82 1/2-100 Jan'y 15th 1868 for 6th six months interest on
$50 U. S. Treas'y Note No. 123,150
Six per cent
Gold Option
F. E. Spinner.
Treas. of the U. S.
1 82 1/4 100

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States;" which were receivable in exchange for United States notes, and in payment of all dues to the United States, in sums of not less than five dollars. Under this law, notes of the denominations of 5, 10, 25 and 50 cents were issued, and the denominations of 5 cents were printed on brown tinted paper, with an engraved head of Jefferson, which was the exact counterpart of that used on the five-cent postage stamp. On the twenty-five-cent note the head of Jefferson was five times repeated. The form and size of these notes are given on pages 105–7. The ten-cent note was printed in green, with the head of Washington, the counterpart of that used on the ten-cent postage stamp. Upon the fifty-cent note this vignette was five times repeated. The form and size of the ten-cent and fifty-cent notes are given on pages 106–8. These notes were issued in the month of August, 1862, and were termed "postage currency," and continued in use until they were replaced by the fractional currency authorized by section four of the act of March 3, 1863. The previous act prohibited private corporations, banking associations, and individuals from issuing or circulating notes for fractions of a dollar, and imposed a penalty, upon conviction, of a fine not exceeding five hundred dollars, and imprisonment not exceeding six months. The law did not prohibit the issue of fractional currency by cities, and considerable amounts were placed in circulation by various municipalities, notwithstanding that in many of the States, laws had been passed in the year 1837, or prior thereto, prohibiting such issues.

The amount of fractional currency was limited to fifty millions of dollars, and denominations of from

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three cents to fifty cents were issued, which were exchangeable for United States notes in sums of not less than three dollars. On the days on which this small currency was first issued to the public, the offices of the Assistant Treasurer in New York and in other cities were thronged with long lines of people anxious to obtain this paper currency to supply the deficiency caused by the withdrawal of silver coin. On account of the scarcity of one and two-dollar notes and of fractional currency, whole sheets of these notes, when they were first issued, were paid to the army, and subsequently were so cut that four 25-cent notes were used in place of a one-dollar note, and four fifty-cent notes in place of a two dollar note, and in this form considerable amounts were paid out. These notes were universally used for small change in and out of the army. The total issue of "postage currency," which commenced August 21, 1862, and ceased May 27, 1863, was $20,215,635. $4,282,082 was outstanding on April 1, 1884, of which $1,028,332 was in denominations of five cents; $1,243,974 in ten cents; $1,039,203 in twenty-five cents, and $970,572 in denominations of fifty cents. The total amount of issues and reissues under both acts was $368,720,074. These little notes were stuffed in the trowsers pocket of the soldier, with the jack-knife, the cartridge, the plug of tobacco, and other handy articles, and soon became unfit for circulation. They wore out rapidly and became ragged and filthy, and were frequently returned for redemption.

The first issues under the act of March 3 commenced on October 10, 1863, and ceased on February 15, 1876; and an act was passed on April 17th, of the latter year, directing the Secretary to replace this circulation by the

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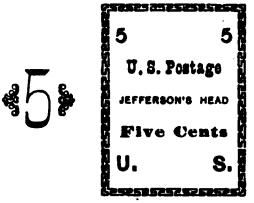
[OBVERSE.]

POSTAGE CURRENCY

Furnished only by the Assistant Treasurers and Designated Depositaries of the U. S.



5 5

RECEIVABLE FOR POSTAGE STAMPS
AT ANY {U.S.} POST OFFICE.

[REVERSE.]

EXCHANGEABLE FOR UNITED STATES NOTES

By any Assistant Treasurer or designated U. S. Depositary in sums not less than FIVE DOLLARS. *Receivable in payment of all dues to the U. States less than* FIVE DOLLARS.

ACT APPROVED JULY 17, 1862.

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[OBVERSE.]

POSTAGE CURRENCY

Furnished only by the Assistant Treasurers and Designated Depositaries of the U. S.

10 10
U. S. Postage
WASHINGTON'S HEAD
Ten Cents
U. S.

10 10

RECEIVABLE FOR POSTAGE STAMPS
AT ANY {U.S.} POST OFFICE.

[REVERSE.]

EXCHANGEABLE FOR UNITED STATES NOTES

By any Assistant Treasurer or designated U. S. Depositary in sums not less than FIVE DOLLARS. *Receivable in payment of all dues to the U. States less than* FIVE DOLLARS.

X TEN X
TEN 10 TEN
X TEN X

ACT APPROVED JULY 17, 1862.

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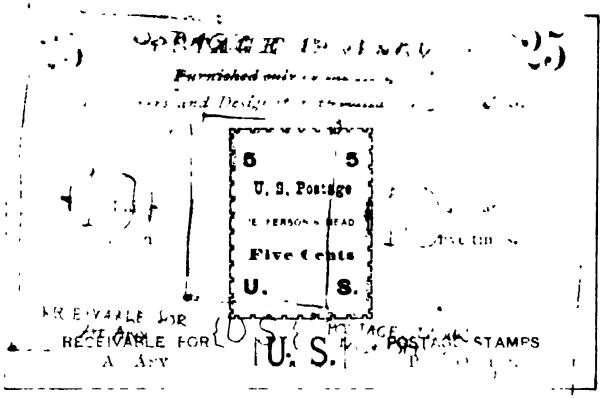

[REVERSE.]

EXCHANGEABLE FOR UNITED STATES NOTES

By any Assistant Treasurer or Designated U. S. Depositary in sums not less than 25 FIVE DOLLARS, *Receivable in payment of all dues to the U. States less than* FIVE DOLLARS.

ACT APPROVED, JULY 17, 1862.

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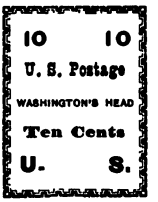
[OBVERSE.]

50 *POSTAGE CURRENCY* 50

Furnished only by the Assistant
Treasurer and Designated Depositaries of the U. S.

This design



appears five times.

RECEIVABLE FOR AT ANY |U. S.| POSTAGE STAMPS POST OFFICE.

[REVERSE.]

EXCHANGEABLE FOR UNITED STATES NOTES

By any Assistant designated U. S. sums not less than Receivable in dues to the U. States less than

50

Treasurer or Depositary in FIVE DOLLARS. *payment of all* FIVE DOLLARS.

ACT APPROVED, JULY 17, 1862.

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issue of subsidiary silver coin. The fractional paper currency was issued in five different series. The highest amount outstanding at any one time was less than fifty millions. The amount outstanding on January 1, 1885, was $15,347,277. A considerable amount is still held by banks and bankers, which is grudgingly paid out to those customers who desire it for purposes of remittance by letter. The principal portion of the amount outstanding will probably never be presented for redemption. The proportion of loss to the people from this fractional currency is vastly greater than that of any other kind of circulation ever issued in this country, and this loss, in a large measure, must be attributed to the small value of the notes and the many casualties of the war. The proportion of legal tender notes and national bank notes, of the highest amount outstanding at any one time, not presented for redemption, or lost, in the course of twenty years, is estimated at about 1½ per cent.

Authority was given by the second section of the act of March 3, 1863, to issue 400 millions of treasury notes, bearing interest at a rate not exceeding six per cent. in lawful money for a term not exceeding three years, payable at periods expressed on their face, and in denominations of not less than ten dollars. These notes were exchangeable, together with the accumulated interest for treasury notes not bearing interest. They were made legal tender for their face value, excluding interest. Power was also given to the Secretary to issue 150 millions of additional greenbacks, which were to be issued only in exchange for these interest-bearing notes. Under this act, $44,520,000 notes were issued, redeemable one year from date, and $166,480,000 two years

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from date, bearing interest at 5 per cent. per annum, which were known as "one and two year notes of 1863."

Authority was given by the act of June 30, 1864, for the issue of 200 millions of treasury notes in denominations of not less than ten dollars, not exceeding three years, and bearing interest not exceeding 7.30 per cent. per annum, interest payable semi-annually, principal and interest to be paid in lawful money. The notes were to be a legal tender for their face value. No seven-thirty notes were issued under this act, but, in lieu thereof, $266,595,440 of compound interest notes were issued. The act did not authorize in terms the issue of compound interest notes, but as the interest at six per cent. compounded, would be considerably less than at 7.30 per cent. simple interest, their issue was not in conflict with the terms of the act. The notes were of the form shown on pages 111–112. The size of these notes was 3½ by 7½ inches. Of these notes, $177,045,770 were issued in redemption of the one and two year five per cent. notes, and it is not probable that more than 200 millions of these notes were outstanding at any one time. Secretary Fessenden, in his report for December 6, 1864, thus refers to the issue of these notes: "The whole amount of national circulation, not bearing interest, exclusive of fractional currency, and of notes issued by national banks, is limited to four hundred millions of dollars, subject to slight occasional increase from the fifty millions held in reserve for the payment of temporary deposits. Of five per cent. interest-bearing notes there were outstanding, on the first of November last, $120,519,110. To a considerable extent these notes have been, and will continue to be, used as currency. Those with

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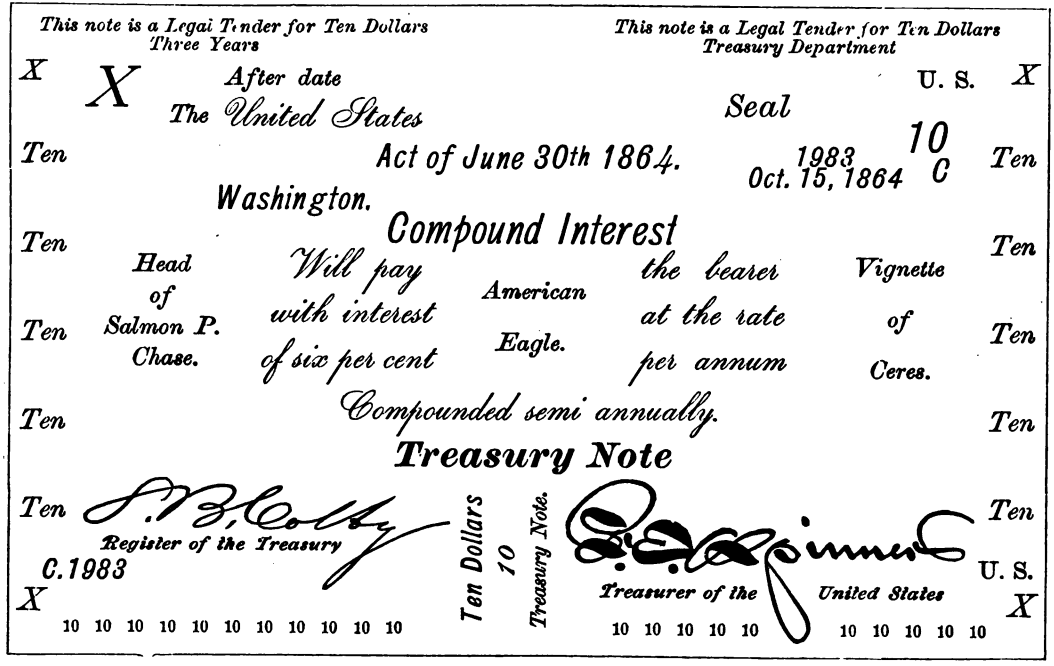

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United States

By Act of Congress
this Note is a Legal Tender
for Ten Dollars but bears
Interest at Six per cent compounded every Six months
though payable only at maturity as follows

6 Months Interest	30	note worth 10.30
One Year	60	10.60
18 months	92	10.92
Two Years	1.25	11.25
30 months	1.59	11.59
Three Years	1.94	11.94

10 10

This sum $11.94 will be paid the holder for
principal and Interest at maturity
of Note three years
from date.

of America.

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coupons have been found particularly objectionable, as, though withdrawn to a certain extent while the interest is maturing, they are liable to be periodically rushed upon the market. In consideration of this feature, a large amount, viz., about ninety millions of the original issue of one hundred and fifty millions of these coupon notes, have been withdrawn and destroyed, and their place occupied by notes payable in three years, bearing interest at six per centum, compounded semi-annually. This is believed to be the best form of interest-bearing legal-tender notes, as being more likely to be withdrawn and held until maturity, as an investment. Of these, fifteen millions in amount were issued under the act of March 3, 1863, and about ninety millions under the act of June 30, 1864. The total amount of interest-bearing notes outstanding on the 22d of November last was $210,-222,870. What proportion of these may be considered as an addition to the circulation I am unable to determine. To that extent, whatever it may be, they contribute to the amount of the currency, and thus in some degree occasion, and in still greater degree sustain, an increase of prices, and depress values."

About two years and eight months after the passage of the last act, authority was given for the issue of temporary loan 3 per cent. certificates, for the purpose of retiring the compound interest notes. When these latter notes were issued, it was expected that they would, as the interest accumulated, soon pass out of circulation into the hands of bankers and capitalists. These expectations were realized, for the interest was only payable at maturity, three years from date. Such notes, with accrued interest, would not be paid out by the holders except in

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cases of absolute necessity. In order to insure the retirement of these notes, "An act to provide ways and means for the payment of compound interest notes," was passed on March 2, 1867. This act authorized the issue of 3 per cent. certificates in denominations of not less than $100, payable on demand. The national banks were authorized to hold these certificates as a part of their reserve, provided that not less than two-fifths of the entire reserve should consist of lawful money of the United States. This privilege did not largely diminish the amount of gold coin and greenbacks which the banks were required continually to keep on hand, as most of the banks held a large amount of cash reserve, in addition to the amount required by law. This excess could with great profit be invested in the new certificates, and they could be used to advantage for clearing-house purposes, and the banks at once availed themselves of this privilege. The amount authorized by this act was fifty millions, which was increased to seventy-five millions by the act of July 25, 1868. These certificates were payable on demand, and redeemable at the pleasure of the Government; they were chiefly issued during the fiscal year 1868 and 1869, and for the most part retired in the fiscal years from 1869 to 1873—$12,195,000 being retired during the latter year.

The act of July 12, 1870, authorized the issue of $54,000,000 additional bank circulation, and section two of that act provided that, at the end of each month after the passage of this act, the Comptroller of the Currency should report the amount of such circulating notes issued, whereupon the Secretary of the Treasury should redeem and cancel a like amount of 3 per cent. certificates; and

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in order to retire such certificates he was authorized to give notice to the holders, designating the number, date and amount, that such certificates shall cease to bear interest and be available for reserve, from and after the day designated in the notice.

Thus it will be seen that the compound interest notes were issued for the purpose of retiring 5 per cent. notes, the 3 per cent. certificates for the retirement of the compounds which were maturing, and the act of July 12, 1870, was passed in turn for the retirement of the 3 per cents; and the different acts authorizing these issues had the effect of rapidly accomplishing these results, with but little inconvenience either to the banks or to the public.

The act of March 3, 1863, authorized the issue of gold certificates, of one and two-year notes, and of compound interest notes; and certificates under the fifth section of that act were used for clearing-house purposes soon after the passage of the national bank act. They were authorized to be issued in sums of not less than $20, corresponding with the denomination of United States notes. The coin and bullion deposited were required to be retained in the treasury for the payment of the same on demand. Certificates representing coin in the treasury were authorized to be issued in payment of interest on the public debt, but it was provided that the amount of certificates issued should not, at any one time, exceed 20 per centum beyond the amount of coin and bullion in the treasury. These certificates were authorized to be received at par in payment of duties. The first issue was made on November 13, 1865. On June 30, 1875, there were outstanding $21,796,300, of which the national banks in New York City held $12,642,180.

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Their issue was discontinued on December 1, 1878, just previous to the resumption of specie payments, and the amount outstanding had decreased on June 30, 1879, to $15,413,700. The amount outstanding on October 3, 1883, was $4,907,440, of which the national banks held $4,594,300. On January 1, 1883, the amount outstanding was $3,568,840. Most of these certificates were issued for clearing-house purposes, in denominations of $1,000, $5,000, and $10,000.

On June 8, 1872, an act was passed authorizing the Secretary of the Treasury to receive United States notes on deposit without interest from national bank associations, in sums not less than $10,000, and issue certificates therefor, of denominations not less than $5,000. These certificates were similar to the 3 per cent. certificates just referred to, except that they bore no interest, and were largely used in place thereof for clearing-house purposes. The certificates were payable on demand in United States notes at the place of issue, and they were authorized to be held and counted by national banks as part of their legal reserve, and to be used in settlement of clearing-house balances. These certificates were not properly treasury notes, and the highest amount issued was $64,780,000, on August 3, 1875, which amount was rapidly reduced after the resumption of specie payments. On June 30, 1875, there were outstanding $59,045,000, of which the national banks held $47,310,000. On June 30, 1876, the amount outstanding was $33,140,000, of which the banks held $27,955. The amount outstanding on September 30, 1884, was $15,945,000, of which the banks held on the same date, $14,200,000.

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The act of February 26, 1879, authorized the issue of 4 per cent. certificates, of the denomination of $10, which were convertible at any time, with accrued interest, into the 4 per cent. bonds authorized to be issued July 14, 1870. This act was passed for the purpose of facilitating the refunding of 5 and 6 per cent. bonds then falling due into 4 per cents, but the act was really unnecessary, for about the time the certificates began to be issued, the 4 per cent. bonds were above par in the market. Long lines of people gathered at the different Government depositories where the certificates were offered, and the amount was taken as fast as they could be furnished. $40 012,750 were disposed of at par, of which $39,398,110 were issued during the fourth quarter of the fiscal year 1879, and the amount outstanding on January 1, 1885, was $260,000.

The table on page 118 exhibits the amount of treasury notes of the different forms issued during the late civil war, outstanding on January 1, 1885, interest upon all of which has long since ceased.

"An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for refunding the floating debt of the United States," which was signed by President Lincoln on February 25, 1862, is the first law ever placed upon the statute books making treasury notes, or anything but gold and silver coin, a tender in payment of debts. Indeed, it may be said that neither the Congress of the United States nor the Continental Congress, which preceded it, issued any form of legal tender treasury notes. The Continental Congress had no power to enact such a law. It did, however, pass a resolution, on January 4, 1777, recommending to

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Notes.	Act.	Rate of Interest.	Interest Ceased.	Principal.	Interest.
Treasury notes of 1861	Mar. 2, 1861.	6 per cent.	March 3, 1863.	$3,000	$364 50
Demand notes	July 17, 1861. / Feb. 12, 1862.	No interest.	.....	58,240	.....
7-30's of 1861	July 17, 1861.	7 3-10 per cent.	Aug. 19 and Oct. 1, 1864.	15,850	1,015 74
Fractional currency.....	July 17, 1862. / Mar. 3, 1863. / June 30, 1864.	No interest.	....	15,347,277	.....
1 year notes of 1863.....	Mar. 3, 1863.	5 per cent.	Various dates in 1865.	38,685	1,946 35
2 year notes of 1863	Mar. 3, 1863.	5 per cent.	Various dates in 1866.	30,000	1,364 55
Compound interest notes..	Mar. 3, 1863. / June 30, 1864.	6 per cent.	June 10, 1867, and / May 15, 1868.	208,350	42,687 53
7-30's of 1864 and 1865 ...	June 30, 1864. / Mar. 30, 1865.	7 3-10 per cent.	Aug. 15, 1867, and / July 15, 1868.	133,150	19,212 74
3 per cent. certificates	Mar. 2, 1867. / July 25, 1868.	3 per cent.	Feb. 28, 1873.	5,000	394 31
Legal tender certificates	June 8, 1872.	No interest.	.....	24,920,000	.....
Gold certificates.....	Mar. 3, 1863.	No interest.	.....	2,580,980	....

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the legislatures of the different States to pass laws making the bills of credit issued by Congress a lawful tender in payment of public and private debts, and a refusal thereof an extinguishment of such debts; that debts payable in sterling money be discharged in continental dollars at the rate of 43.6 sterling per dollar; and that in the discharge of all other debts and contracts, continental dollars shall pass at the rate fixed by the respective States for the value of Spanish milled dollars. In accordance with the recommendation contained in these resolutions, continental paper money was made a legal tender in Connecticut, Massachusetts, Rhode Island, and New Jersey in 1776, and in Pennsylvania, Delaware, Maryland, and Virginia in 1777.

The legal tender act was passed during the second session of the 32d Congress, which met December 2, 1861. The report of the Secretary of the Treasury bears date December 9th. The third instalment of fifty millions, of the loan of 150 millions already referred to, had been negotiated on the 16th of November previous, with the associated banks. The Secretary was hopeful that the war would be brought to an auspicious termination before midsummer, but at the same time submitted estimates based upon its continuance. In this event, it was estimated that the public debt, which, on July 1, 1861, was $90,867,828, would be on July 1, 1862, 517 millions, and on July 1st of the following year, 897 millions. He recommended the issue of circulating notes in place of the existing bank-note circulation, which depended "on the laws of thirty-four States, and the character of some sixteen hundred private corporations."

Two plans for effecting this object were suggested:

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the first was the withdrawal of the bank circulation, and the issue of United States notes instead thereof, payable in coin on demand; the second contemplated the delivery to banks of notes prepared for circulation under national direction, and to secure prompt convertibility into coin by the pledge of United States bonds, and other needful regulations. Both of these plans were discussed at considerable length in the report, the preference of the Secretary being decidedly in favor of the issue of bank notes. The avails of the large loan made from the banks were not allowed to remain on deposit, to be drawn by checks as the necessities of the Government should require, but were, from time to time, paid into the treasury, so that it was quite difficult for some of the banks to meet the last instalment. The banks were in danger of suspending specie payment at the time of the meeting of Congress. Suspension finally took place on December 28, 1861, and two days later, on the 30th, Mr. Spaulding, of the sub-committee of the Committee of Ways and Means, introduced the legal tender bill.

A national bank bill had been prepared previously, and when nearly completed, Mr. Hooper, of Massachusetts, also of the sub-committee, incorporated in it several provisions contained in a recent free-banking bill, which had passed the Legislature of his own State. Two hundred copies of this bill, which was hastily prepared late in the month of December, were printed for the use of the Committee of Ways and Means, and a copy of this bill, which was the basis of the national bank act, which became a law about a year afterward, is in the possession of the writer. It being evident that the bank bill would

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encounter considerable opposition from the friends of banks organized under State laws, and that great delay would necessarily occur from the consideration of an elaborate bank bill of sixty or more sections, arranged for the organization of banks in the different States of the Union, the bill was laid aside, and the bill authorizing the issue of legal tender notes was considered.

An informal letter was read to the Committee from Attorney-General Bates, in which he gave it as his opinion that Congress had not only the right to issue such bills of credit, but also to make them a legal tender. Discussion of the bill continued for several days, and upon a vote being taken, it was found that the Committee was equally divided, but by the change of a vote it was finally reported to the House on July 7, 1862, and published in the leading New York newspapers. Only two daily newspapers favored the measure, and it is said that other newspapers, which were bitterly hostile, were for a time excluded from the privilege of the mails. The leading financial magazine ridiculed and denounced the plans of the Secretary and of Congress in its monthly issues, and at one time declared that "the financial fabric of the Union totters to its base!" Delegates from ten of the principal banks in the three leading cities appeared in Washington and opposed the bill. The bill was afterward submitted to the Secretary of the Treasury by the Committee, and, upon its return with his suggestions, was reported to the House on January 22, 1862, with the title above given, as a substitute for the previous bill. The bill passed the House on February 6, 1862, by a vote of 93 to 59. There were no democratic votes in favor of the bill, and among

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the nays were: Morrill, of Vermont; Conkling and Pomeroy, of New York; Porter, of Indiana; Lovejoy, of Illinois; Thomas, of Massachusetts; Rollins, of New Hampshire, and other leading Republicans. The chief amendments in the Senate were: requiring payment of interest semi-annually in coin on bonds and seven-thirty notes; conferring on the Secretary power to sell 6 per cent. bonds at the market value thereof for coin; making the bonds redeemable in five years and payable in twenty years from date at the option of the Government, and authorizing temporary deposits in the treasury at 6 per cent.

There was considerable debate in both Houses upon the question of the right of the Government to issue demand notes, and the arguments were not unlike those which have already been given in previous debates in Congress. The principal discussion was, however, upon the constitutional right of Congress to make these notes a legal tender.

Secretary Chase, afterward Chief Justice, in a letter to the Committee of Ways and Means on January 29, 1862, says: "It is not unknown to the Committee that I have felt, nor do I wish to conceal that I now feel, a great aversion to making anything but coin a legal tender in payment of debts. It has been my anxious wish to avoid the necessity of such legislation. It is, however, at present impossible, in consequence of the large expenditures entailed by the war, and the suspension of the banks, to procure sufficient coin for disbursement; and it has, therefore, become indispensably necessary that we should resort to the issue of United States notes. The making them a legal tender might, however, still

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be avoided, if the willingness manifested by the people generally, by railroad companies, and by many of the banking institutions, to receive and pay them as money in all transactions, were absolutely or practically universal; but, unfortunately, there are some persons and some institutions which refuse to receive and pay them, and whose action tends, not merely to the unnecessary depreciation of the notes, but to establish discriminations in business against those who, in this matter, give a cordial support to the Government, and in favor of those who do not. Such discriminations should, if possible, be prevented; and the provision making the notes a legal tender, in a great measure at least, prevents it, by putting all citizens in this respect on the same level, both of rights and duties.

"The Committee, doubtless, feel the necessity of accompanying this measure by legislation necessary to secure the highest credit, as well as the largest currency of these notes. This security can be found, in my judgment, by proper provisions for funding them in interest-bearing bonds; by well-guarded legislation authorizing banking associations with circulation based on the bonds in which the notes are funded; and by a judicious system of adequate taxation, which will not only create a demand for the notes, but—by securing the prompt payment of interest—raise and sustain the credit of the bonds. Such legislation, it may be hoped, will divest the legal tender clause of the bill of injurious tendencies, and secure the earliest possible return to a sound currency of coin and promptly convertible notes."

From the introduction of the bill in Congress on December 30, 1861, to its final approval on February 25,

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1862, a period of eight weeks, it was thoroughly discussed both in Congress and throughout the country. More than twenty members of the House participated in the debate. Messrs. Spaulding, Hooper, Alley, Kellogg, Campbell, Hickman, and Stevens were the most prominent speakers in favor of the measure. Messrs. Pendleton, Vallandigham, Morrill, Conkling, Wright, and Lovejoy opposed it. Mr. Spaulding made the speech introducing the bill. He said: "The bill before us is a war measure, a measure of *necessity*, and not of choice, presented by the Committee of Ways and Means to meet the most pressing demands upon the treasury to sustain the army and navy, until they can make a vigorous advance upon the traitors, and crush out the rebellion. These are extraordinary times, and extraordinary measures must be resorted to in order to save our Government, and preserve our nationality."

In the course of the discussion the following extract from a letter just received by Mr. Spaulding from the Secretary of the Treasury was read: "Immediate action is of great importance. The treasury is nearly empty. I have been obliged to draw for the last instalment of the November loan. So soon as it is paid, I fear the banks generally will refuse to receive the United States notes, unless made a legal tender. You will see the necessity of urging the bill through without more delay."

The influences which seemed to render it necessary that the notes authorized to be issued by the bill should be declared a legal tender, is shown, not only by the letters of the Secretary but by the debate which followed.

Mr. Hooper said: "The unusual exigencies of the country require that we should look for other and deeper

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sources of revenue than any to which we have heretofore been accustomed. We are contending for maintenance of the Government, the preservation of the Union, and for the enforcement of the laws."

Mr. Alley said: "Beneficent as this measure is, as one of relief, nothing could induce me to give it sanction but uncontrollable necessity. * * There can be no more issues than the real necessities of the Government require. The Government cannot make issues, like the banks, for profit. * * Its issues must necessarily be limited to its absolute wants."

On the same point Mr. Kellogg said: "If this question came up in ordinary times, I am frank to confess that I might, perhaps, have had some doubt of its constitutionality sufficient to induce me to oppose it. I mean by that only to say that in time of peace, when the integrity of the Government is not threatened, I would be more careful and cautious; and if I doubted the constitutionality of the measure I would not vote for it. But, sir, in this our extremity, while we are struggling to perpetuate our Government, I am willing to go to the very verge of the Constitution. I treat this, Mr. Chairman, as emphatically and clearly a war measure."

Mr. Blake argued that it was constitutional to issue treasury notes and make them a legal tender. He insisted that it was a necessary and proper means of carrying into effect the war powers—to raise and support armies, and to provide and maintain a navy. We are now in the midst of a great national exigency, and one, too, that we must provide for; and one that in the application of the means there must of necessity be great latitude of discretion.

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Mr. Campbell remarked: "The bill now before the Committee is necessary to sustain the credit of the country, and to carry on the war. It is with reluctance that I have come to this conclusion. I do not like the necessity which exists for the legal tender clause; still less do I like to place the issues of the Government in the hands of the brokers and money-lenders of the country. Depreciated now, let the legal tender clause fail, and mark the result to-morrow. The treasury notes will fall from 4 per cent. to 15 and 25 below par, and the Government will have to pay that percentage additional for every article they purchase."

Mr. Hickman, of Pennsylvania, on the same side, said: "I am disposed to waive the question of propriety or expediency, and to vote for it as a necessity."

Mr. Stevens, who closed the debate, said: "This bill is a measure of necessity, not of choice. No one would willingly issue paper currency not redeemable on demand, and make it a legal tender. It is never desirable to depart from the circulating medium which, by the common consent of civilized nations, forms the standard value. But it is not a fearful measure, and when rendered necessary by exigencies it ought to produce no alarm."

He argued in favor of the constitutionality of the legal tender clause, and that it was a necessary and proper measure at this time. "In short, whenever any law is *necessary* and proper to carry into execution any delegated power, such law is valid. That necessity need not be absolute, inevitable, and overwhelming—if it be useful, expedient, profitable, the necessity is within the constitutional meaning. Whether such necessity exists

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is solely for the decision of Congress. Their judgment is absolute and conclusive. If Congress should decide this measure to be necessary to a granted power, no department of the Government can rejudge it. The Supreme Court might think the judgment of Congress erroneous, but they could not review it. * * Our proposition is to issue United States notes, secured at the end of twenty years to be paid in coin, and the interest raised by taxation semi-annually; such notes to be money, and of uniform value throughout the Union. I look upon the immediate passage of the bill as essential to the very existence of the Government. Reject it, and the financial credit, not only of the Government, but of all the great interests of the country, will be prostrated. Mr. Chairman, let me say in conclusion, that unless this bill is to pass with the legal tender clause in it, it is not desirable to its friends, or to the Administration, that it should pass at all; and those who think as I do will have to vote against it, if it should be thus mutilated and emasculated. If it is to be defeated, I should be glad if we had the power which they have in the British Parliament—to resign our places on the Committee of Ways and Means, and leave it to those who oppose this bill to mature some other measure. So far as I am concerned, I shall be modest enough not to attempt any other scheme. The Committee of Ways and Means have labored in the preparation of this measure anxiously, and to the best of their poor abilities. We are not infallible. We do not come near it. I am but poorly qualified for anything of this kind. But we have given it our most anxious consideration, and have consulted those whom we believed to

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be the best qualified to advise us. We have sought to harmonize conflicting views in the substitute which the majority of the Committee have prepared, and we hope it will pass. We believe that the credit of the country will be sustained by it, that under it all classes will be paid in money which all classes can use, and that it will confer no advantage on the capitalist over the poor laboring man."

The following extracts from the speeches of those opposed to the bill will indicate the drift of their arguments. Mr. Pendleton said: "These notes are to be made lawful money, and a legal tender in discharge of all pecuniary obligations, either by the Government or individuals, a character which has never been given to any note of the United States, or any note of the Bank of the United States, by any law ever passed. Not only, sir, was such a law never passed, but such a law was never voted on, never proposed, never introduced, never recommended by any department of the Government; the measure was never seriously entertained in debate in either branch of Congress." He contended that the bill, if passed, would impair the obligation of past as well as of future contracts, and that it would make it illegal to make a contract for dealing in gold or silver coin, for the reason that these legal tender notes might be tendered in payment of coin contracts; and added: "When I come to examine the powers of Congress according to the principles of interpretation to which I adhere, I look to the grants of the Constitution. I find no grant of this power in direct terms, or, as I think, by fair implication. It is not an accidental omission; it is not an omission through inadvertency, It was inten-

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tionally left out of the Constitution, because it was designed that the power should not reside in the Federal Government."

Mr. Vallandigham denied the right of the Federal Government to provide a paper currency, intended primarily to circulate as money, and meet the demands of business and commercial transactions, and to the exclusion of all other paper. It is not the intent or object of the substitute to furnish such a currency for the country. He said: "THE SHIP OF STATE IS UPON THE ROCKS. I was not the helmsman who drove her there; nor had I part or lot in directing her course."

Mr. Morrill protested "against making anything a legal tender but gold and silver, as calculated to undermine all confidence in the Republic, whose reputation should be dearer to statesmen, as well as to soldiers, than life itself."

Mr. Conkling assigned his reasons for voting against the attempt to make paper a legal tender as follows: "The proposition is a new one. No precedent can be urged in its favor; no suggestion of the existence of such a power can be found in the legislative history of the country; and I submit to my colleague, as a lawyer, the proposition that this amounts to affirmative authority of the highest kind against it. Had such a power lurked in the Constitution, as construed by those who ordained and administered it, we should find it so recorded. The occasion for resorting to it, or at least referring to it, has, we know, repeatedly arisen; and had such a power existed, it would have been recognized and acted on. It is hardly too much to say, therefore, that the uniform and universal judgment of statesmen, jurists, and lawyers has denied the constitutional right of

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Congress to make paper a legal tender for debts to any extent whatever. But more is claimed here than the right to create a legal tender heretofore unknown. The provision is not confined to transactions in *future*, but is retroactive in its scope. It reaches back and strikes at every existing pecuniary obligation." And he added: "I believe all the money needed can be provided in season by means of unquestionable legality and safety. The substitute I have offered will, I believe, without essential alteration, effect that result."

Mr. Wright thought that "the people had means enough in their possession, and he was willing to go for taxation to the uttermost limit; but the time had not yet arrived when we should resort to such an extreme measure as to make these notes a legal tender."

Mr. Lovejoy held "that no respectable argument could be made in vindication of the constitutionality of this bill. He would admit the plea of necessity if he believed it; and he thought it more manly to confess it, as Jefferson did, than to attempt to torture the Constitution into the support of a measure which everybody must see to be unconstitutional."

The bill passed the House on February 6th, by a vote of 93 to 59. It was sent to the Senate on February 7th. Mr. Fessenden, Chairman of the Finance Committee, obtained unanimous consent to consider the subject forthwith, and read a letter from the Secretary of the Treasury of which the following is an extract: "The condition of the treasury requires immediate legislative provision."

Mr. Fessenden opened the debate. He proposed to state briefly the arguments on both sides without either

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favoring or opposing the measure. He said: "The ground upon which this clause making these notes a legal tender is put, I have already stated. It is put upon the ground of absolute, overwhelming necessity; that the Government has now arrived at that point where it must have funds, and those funds are not to be obtained from ordinary sources, or from any of the expedients to which we have heretofore had recourse, and therefore, this new, anomalous, and remarkable provision must be resorted to in order to enable the Government to pay off the debt that it now owes, and afford circulation which will be available for other purposes. The question then is, does the necessity exist?" He did not hesitate to say that he "would advocate the use of the strong arm of the Government to any extent in order to accomplish the purpose in which we are engaged. He would take the money of any citizen against his will to sustain the Government, if nothing else was left, and bid him wait until the Government could pay him. It is a contribution which every man is bound to make under the circumstances. We can take all the property of any citizen. That is what is called a forced contribution. * * The question after all returns: Is this measure absolutely indispensable to procure means? If so, as I said before, necessity knows no law. Say what you will, nobody can deny that it is bad faith. If it be necessary for the salvation of the Government, all considerations of this kind must yield; but to make the best of it, it is bad faith, and encourages bad morality, both in public and private. Going to the extent that it does, to say that notes thus issued shall be receivable in payment of all private obligations, however contracted,

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is in its very essence a wrong, for it compels one man to take from his neighbor, in payment of a debt, that which he would not otherwise receive or be obliged to receive, and what is probably not full payment."

Mr. Collamer made an elaborate speech against the legal-tender clause in the bill. He argued that it was unconstitutional, and that even if it was a necessity, he could not vote for the measure. His honest opinion was that the Constitution never intended to invest Congress with any such power. He referred to the debates in the convention that formed the Constitution, to show that "the men of that period always entertained the opinion that the United States could have nothing else a tender but coin. While they lived there never was such a thing thought of as attempting to make the evidences of the debt of the Government a legal tender, let their form be what they might." He argued that there was an express power "to borrow money on the credit of the United States. That where there is an *express* power to do a thing, there can be no *implied* power to do the same thing. There were two modes of replenishing the treasury. One was by taxation, and the other to borrow money. To borrow money there must be a lender and a borrower; and both should act voluntarily, and not compel the lender to part with his money without an inducement. The operation of this bill was not anything like as honorable or honest as a forced loan."

Mr. Sherman spoke in favor of the legal-tender clause, and in regard to its necessity said: "Every organ of financial opinion"—referring to the action of the Chambers of Commerce in the principal cities—"if that is a

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correct expression—in this country agrees that there is such a necessity, in case we authorize the issue of demand notes. * * Our arguments must be submitted finally to the arbitration of the courts of the United States. When I feel so strongly the necessity of this measure, I am constrained to assume the power, and refer our authority to exercise it to the courts. I have shown, in reply to the argument of the Senator from Maine, that we must no longer hesitate as to the necessity of this measure. That necessity does exist, and now presses upon us." He thought himself required "to vote for all laws necessary and proper for executing these high powers, and to accomplish that purpose. This is not the time when I would limit these powers. Rather than yield to revolutionary force, I would use revolutionary force."

Mr. Howe said: "Congress is also clothed with power 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States.' Those who deny the constitutional authority to pass this bill must deny its necessity or its propriety. Those who deny its necessity or its propriety ought to show us some plan for avoiding it, some measure adequate to the emergency, and more proper than the one proposed by this bill. Two months have elapsed since the policy of this bill has been discussed, and no one of its opponents has yet produced a substitute. The total neglect to offer a substitute is *prima facie* evidence of the necessity for this."

Mr. Bayard said: "No one can deny the fact that in contracts between man and man, and in government

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contracts to pay money, the obligation is to pay intrinsic value. If you violate that by this bill, which you certainly do, how can you expect that the faith of the community will be given to the law which you now pass, in which you say that you will pay hereafter the interest on your debt in coin? Why should they give credit to that declaration? If you can violate the Constitution of the United States in the face of your oaths, in the face of its palpable provision, what security do you offer to the lender of money?"

Mr. Sumner argued, in the present existing state of the country, for the constitutionality and expediency of the legal-tender clause. He quoted from Mr. Justice Story "that all these prohibitory clauses as to coining money, emitting bills of credit, and tendering anything but gold and silver in payment of debts, are founded upon the same general considerations. The policy is to provide a fixed and uniform rule throughout the United States, by which commercial and other dealings of the citizens, as well as the moneyed transactions of the Government, might be adjusted" (2 Story's Com., Sec. 1372).

"If this view be correct, then no inference adverse to the powers of the National Government can be drawn from these prohibitory clauses; for whatever may be the policy of the National Government, it will be a fixed and uniform rule throughout the United States." "Surely, we must all be against paper money, we must all insist upon maintaining the integrity of the Government; and we must all set our faces against any proposition like the present, except as a temporary expedient, rendered imperative by the exigency of the hour."

"Others may doubt if the exigency is sufficiently im-

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perative; but the Secretary of the Treasury, whose duty it is to understand the occasion, does not doubt. In his opinion the war requires this sacrifice. Whatever may be the national resources, they are not now within reach, except by summary process. Reluctantly, painfully, I consent that the process should issue. And yet I cannot give such a vote without warning the Government against the dangers from such an experiment. The medicine of the Constitution must not become its daily bread."

The motion of Mr. Collamer, on February 13, to strike out the legal tender clause, was defeated, 17 yeas to 22 nays. Anthony, of Rhode Island, Collamer and Foot, of Vermont, Fessenden, of Maine, King, of New York, Cowan, of Pennsylvania, Foster, of Connecticut, and Willey, of Virginia, of the Republicans, voted yea. Four Democrats only—Davis, of Kentucky, McDougall, of California, Rice, of Minnesota, and Wilson, of Missouri—voted nay. The bill passed by a vote of 30 to 7, three Republicans—Collamer, Cowan, and King—and four Democrats—Kennedy, Pearce. Powell, and Saulsbury—voting nay.

The Senate amendment to pay interest upon the five-twenty bonds in coin was adopted by the House, by a vote of 88 to 56. The amendment authorizing the Secretary to sell the bonds at the market value was also adopted—ayes, 72; nays, 66.

On February 20th the amendments were returned to the Senate with the concurrence of the House in part of them, and non-concurrence in others, and with some amendments to the Senate amendments; after which a conference committee—Senators Fessenden,

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Sherman, and Carlisle, and Representatives Stevens, Horton, and Sedgwick—was appointed, which committee had a long consultation extending through two or three days. The report of the conference committee was agreed to on the 24th in the House by yeas 97, nays 22, and in the Senate on the 25th without a division, and on the same day the bill was approved by the President. It authorized the issue of 150 millions of United States notes, not bearing interest, payable to bearer at the Treasury of the United States, and of denominations of not less than $5, fifty millions of which were to be in lieu of the demand treasury notes which had been previously issued; they were similar in form to those notes, but they were not receivable in payment of duties on imports, and were not payable by the Government for interest upon its obligations, which were payable in coin; they were to be a legal tender in payment of all other debts, public and private, within the United States. They differed from the first notes issued also, and in this respect—that all holders of legal-tender notes were authorized to deposit any sum not less than $50, or any multiple of $50, with the Treasurer, or either of the Assistant Treasurers, and receive duplicate certificates, upon which were to be issued to the holder an equal amount of bonds of the United States bearing interest at the rate of 6 per centum per annum, payable semi-annually, and redeemable at the pleasure of the United States after five years, and payable twenty years from the date thereof. The second section of the same act authorized the issue of 500 millions of five-twenty bonds into which the treasury notes were to be funded, in accordance with the previous section and as stated in the title of the bill.

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The first notes issued were of the date of March 10, 1862, and there was printed upon the back the following words: "This note is a legal tender for all debts, public and private, except duties on imports and interest on the public debt, and is exchangeable for United States 6 per cent. bonds redeemable at the pleasure of the United States after five years." The ten-dollar note was in its general appearance almost precisely like the demand note of that denomination; the principal difference being that the words "on demand" were omitted, and the signatures of the Register and Treasurer were engraved.

On June 7, 1862, the Secretary addressed letters to the chairmen of the Committee of Ways and Means of the House and the Finance Committee of the Senate, recommending a further issue of 150 millions of dollars of legal-tender notes. He said that nearly the whole issue of sixty millions in demand notes was held by bankers and by capitalists, and was at a premium of from $\frac{3}{4}$ to $1\frac{1}{4}$ per cent. on account of its availability for the payment of duties; so that there was really only about ninety millions of United States notes in circulation. He said that the United States notes are maintained at near par in gold by the provision for their conversion into bonds bearing 6 per cent. interest payable in coin, and that resumption would be more easily effected "if the currency—small as well as large—were of United States notes, than if the channels of circulation be left to be filled up by the emissions of non-specie paying corporations, solvent and insolvent." With these letters he transmitted bills for the consideration of these committees. The immediate necessities of the Government admitted of but little delay, and the bill, substantially

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as recommended by the Secretary, passed both Houses, and was signed by the President on June 11, 1862. The bill authorized the issue of 150 millions of legal-tender notes, thirty-five millions of which were to be in denominations less than $5. The subsequent act of March 3, 1863, authorized the issue of an additional 150 millions, making the aggregate authorized issue of legal-tender notes 450 millions of dollars. This act was similar to the previous legal-tender acts, so far as the issue of treasury notes was concerned, except that it provided "that the holders of United States notes issued under former acts shall present the same for the purpose of exchanging them for bonds as therein provided on or before July 1, 1863, and thereupon the right to exchange the same shall cease and determine."

After the passage of the act of March 3, 1863, the Secretary decided to commence the negotiation of 5 per cent. ten-forty bonds, and gave notice that he should decline to allow the holders of legal tenders to fund such notes in bonds bearing a greater rate of interest than 5 per cent. after July 1, 1863. The negotiation of the 5 per cents was not successful at that time, and that portion of the act of March 3d which repealed the right to fund legal tenders into five-twenties, as printed upon the back of the notes, was not only a violation of the contract with the holder, but also a serious financial mistake. It had the effect to materially reduce the value of the treasury notes in the market, prevented the further funding of treasury notes after July 1st, and undoubtedly postponed for many months the date for the resumption of specie payment.

The highest amount of legal-tender notes outstanding

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at any time was on January 3, 1864, when the amount reached $449,338,902. The second section of the act of June 30, 1864, provided that "the total amount of United States notes issued or to be issued shall not exceed 400 millions, and such additional sum, not exceeding fifty millions, as may be temporarily required for the redemption of temporary loans." The following table shows by denominations the amount of legal-tender notes outstanding on January 1, 1885:

Ones	$26,523,143 80
Twos	26,840,217 20
Fives	77,538,815 00
Tens	67,860,366 00
Twenties	55,513,489 00
Fifties	22,703,695 00
One hundreds	33,263,790 00
Five hundreds	15,015,000 00
One thousands	22,272,500 00
Five thousands	100,000 00
Ten thousands	50,000 00
Less destroyed in the Chicago fire	1,000,000 00
Total	$346,681,016 00

Secretary McCulloch, in his report for 1865, expressed the opinion that the legal-tender acts were war measures, and ought not to remain in force one day longer than should be necessary to enable the people to prepare for a return to the gold standard. The House of Representatives during the same month passed a resolution, by a vote of 144 yeas to 6 nays, "cordially concurring in the views of the Secretary of the Treasury in relation to the necessity of the contraction of the currency, with a view

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to as early a resumption of specie payment as the business interests of the country will permit." In order to carry into effect this resolution, Congress, by an act approved March 12, 1866, authorized the retiring and cancellation of not more than ten millions of legal-tender notes within six months from the passage of the act, and thereafter not more than four millions in any one month. Under this act the amount outstanding was so far reduced that on December 31, 1867, the amount was 356 millions. On February 4, 1868, the further reduction of the volume of such notes was prohibited, leaving the last-named amount outstanding until October 1, 1872. Between March 17, 1873, and January 15, 1874, under Secretary Richardson, the amount was increased to $382,979,815, and on June 20, 1874, the maximum amount was fixed at $382,000,000; section six of the act of that date providing that "the amount of United States notes outstanding and to be used as a part of the circulating medium shall not exceed the sum of 382 millions, which said sum shall appear in each monthly statement of the public debt, and no part thereof shall be held or used as a reserve."

Section three of the act of January 14, 1875, authorized an increase of the circulation of national banks, in accordance with existing law, without respect to the limit previously existing, but required the Secretary of the Treasury to retire legal-tender notes to an amount equal to eighty per cent. of the national-bank notes thereafter issued, until the amount of such legal-tender notes outstanding should be 300 millions, and no more. Under the operation of this act $35,318,984 of legal-tender notes were retired, leaving the amount in circulation on

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May 31, 1878, the date of the repeal of the act, $346,681,016, which is the amount now outstanding.

The table on page 142 exhibits the amount of the various issues of Treasury notes outstanding on July 1st, of each year from 1862 to 1884, and on January 1, 1885; together with the amount of national-bank notes and the value of the legal-tender Treasury note as compared with coin for the same dates.

The act of January 14, 1875, required the Secretary of the Treasury, on and after January 1, 1879, to redeem in coin the legal-tender notes on their presentation at the office of the Assistant Treasurer in the city of New York, in sums of not less than $50. In order that he might always be prepared to do this, he was authorized "to use any surplus revenue from time to time in the Treasury not otherwise appropriated, and to issue, sell, and dispose of, at not less than par in coin, any of the five, four and one-half, and four per cent. bonds authorized by the act of July 14, 1870. Under this act Secretary Sherman, in 1877, sold at par in coin fifteen millions of four and one-half per cents, and twenty-five millions of four's; and in April, 1878, he sold fifty millions of four and one-half per cents at a premium of 1½ per cent. This coin was placed in the Treasury for purposes of resumption, and on January 1, 1879, the Secretary held 135 millions of gold coin and bullion, and, in addition, over thirty-two millions in silver coin and bullion; the gold coin alone being nearly equal to 40 per cent. of the United States notes then outstanding.

The Assistant Treasurer of the United States, at New York, became a member of the clearing-house, thus facilitating the business of the banks with the Government.

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JULY 1.	Demand notes.	Legal-tender notes.	7-30 notes.	Fractional currency.	One and two year notes of 1863.	National-bank notes.	Value of paper dollar as compared with coin.
1862	$53,040,000	$96,620,000	$122,582,485	.....	.....	.....	$0.86.6
1863	3,351,019	297,767,114	139,974,435	$20,192,456	$89,879,475	.....	.76.6
1864	780,999	431,178,670	139,286,935	22,894,877	153,471,450	$31,235,270	.38.7
1865	472,603	432,687,966	671,610,397	25,005,829	42,338,710	146,137,860	.70.4
1866	272,162	400,619,206	830,000,000	27,070,877	3,454,230	281,479,908	.66.0
1867	208,432	371.783,599	813,460,622	28,307,524	1,123,630	298,625,379	.71.7
1868	141,723	356,000,000	488,344,847	32,626,952	555,492	299,762,855	.70.1
1869	123,739	356,000,000	37,397,197	32,114,637	347,772	299,929,624	.73.5
1870	106,256	356,000,000	661,000	39,878,684	248,272	299,766,984	.85.6
1871	96,505	356,000,000	475,900	40,582,875	198,572	318,261.241	.89.0
1872	88,296	357,500,000	352,150	40,855,835	167,522	337,664,795	.87.5
1873	79,967	356,000,000	293,450	44,799,365	142,105	347,267,061	.86.4
1874	76,732	382,000,000	247,650	45,881,296	127,625	351,981,032	.91·0
1875	70,107	375,771,580	213,900	42,129,424	113,375	354,408,008	.87.2
1876	66,917	369,772,284	200,850	34,446,595	104,705	332,998,336	.89.5
1877	63,962	359,764,332	181,400	20,403,137	95,725	317,048,872	.94.7
1878	62,297	346,681,016	173,950	16,547,769	90,485	324.514,284	.99.4
1879	61,470	346,681,016	164,150	15,842,606	86,185	329,691,697	1.00.0
1880	60,975	346,681,016	161,500	15,590,888	82,485	344,505,427	1.00.0
1881	60,535	346,681,016	158,450	15,481,887	79,985	355,042,675	1.00.0
1882	59,695	346,681,016	155,250	15,423,182	74,965	358,742,034	1.00.0
1883	58,985	346,681,016	153,400	15,376,624	71,765	356,815,510	1.00.0
1884	58,440	346,681,016	149,650	15,355,995	69,765	339,499,883	1.00.0
1885, January 1	58,240	346,681,016	149,000	15,347,277	68,685	329,158,623	1.00.0

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The banks in New York strengthened the hands of the Government by agreeing to receive United States notes, not only for their ordinary balances, but in payment of the interest upon the public debt, and of other coin obligations of the Government. The banks of the country, at the date of resumption, held more than one-third of the outstanding treasury notes; but they had so much confidence in the ability of the Secretary to maintain resumption that none were presented by them for redemption. The people preferred the issues of national banks and of the Government to coin itself. There was, therefore, no demand for payment of the notes of the Government, and the gold coin in the treasury, which amounted to 135 millions on the day of resumption, increased more than thirty-six millions in the next ten months. The amount held on November 1, 1879, exceeded 171 millions, and on November 1, 1883, 209 millions. The amount held on January 1, 1885, was $234,975,852, including $93,287,420, held for the redemption of gold certificates outstanding. The resumption act is still in force, and gives the Secretary unlimited power with which to provide for the redemption in coin of the legal-tender notes. He is thus enabled, so long as the credit of the Government continues good, to check, by the sale of United States bonds, any exportation of coin which might endanger the redemption of the United States legal-tender notes.

From the date of the passage of the act of April 12, 1866, which authorized a reduction of the amount of legal-tender notes, to the passage of the act of July 12, 1882, enabling national banking associations to extend their corporate existence, a period of more than sixteen

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years, hundreds of bills of almost every conceivable form to regulate the currency were introduced in Congress. Throughout the country the subject was continually discussed, not only during political campaigns and at public conventions, but in the smaller gatherings of the school district and the meetings of individuals by the wayside. Speeches and political pamphlets by the thousand, essays, campaign papers innumerable, and caricatures of almost every kind and description, upon the subject of the expansion and contraction of the currency, and its effect upon business, were distributed broadcast in all directions. Perhaps the most plausible argument which was presented, over and over again, in every portion of the country during these continued discussions, was in reference to the retirement of the national bank-notes, and the substitution therefor of treasury notes, in order, as was claimed, to save to the Government the interest upon the bonds held by the national banks as security for their circulating notes. Discussions of this subject in its various forms, and statements of the profits of the circulation of the national banks at different dates, may be found in the reports of the Comptroller of the Currency during the last nine years.

A recent and distinguished writer, discussing the policy of the legal-tender issues, says: "Grave differences of opinion exist, even to this day, concerning the necessity and expediency of the legal-tender provision. The judgment of many whose financial sagacity is entitled to respect is that if the internal tax had been first levied, and the policy adopted of drawing directly upon the banks from the treasury for the amounts of any loans in their hands, the resort by the Government to

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irredeemable paper might at least have been postponed and possibly prevented. The premium on gold became the measure of the depreciation of the government credit, and practically such premiums were the charge made for every loan negotiated. In his report of December, 1862, Secretary Chase justified the legal-tender policy. He explained that by the suspension of specie payments the banks had rendered their currency undesirable for government operations, and consequently no course other than that adopted was open. Mr. Chase declared that the measures of general legislation had worked well. 'For the fiscal year ending with June,' he said, 'every audited and settled claim on the Government, and every quartermaster's check for supplies furnished which had reached the treasury, had been met.' For the subsequent months the Secretary 'was enabled to provide, if not fully, yet almost fully, for the constantly increasing disbursements.'

"The political effects of the legal-tender bill were of large consequence to the Administration and to the successful conduct of the war. If it had been practicable to adhere rigidly to the specie standard, the national expenditure might have been materially reduced; but the exactions of the war would have been all the time grating on the nerves of the people and oppressing them with remorseless taxation. Added to the discouragement caused by our military reverses, a heavy financial burden might have proved disastrous. The Administration narrowly escaped a damaging defeat in 1862, and but for the relief to business which came from the circulation of legal-tender notes, the political struggle might have been hopeless. But as trade revived under

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the stimulus of an expanding circulation, as the market for every species of product was constantly enlarging and prices were steadily rising, the support of the war policy became a far more cheerful duty to the mass of our people.

"This condition of affairs doubtless carried with it many elements of demoralization, but the engagement of the people in schemes of money-making proved a great support to the war policy of the Government. We saw the reproduction among us of the same causes and the same effects which prevailed in England during her prolonged contest with Napoleon. Money was superabundant; speculation was rife; the Government was a lavish buyer, a prodigal consumer. Every man who could work was employed at high wages; every man who had commodities to sell was sure of high prices. The whole community came to regard the prevalent prosperity as the outgrowth of the war. The ranks of the army could be filled by paying extravagant bounty after the ardor of volunteering was past, and the hardship of the struggle was thus in large measure concealed if not abated. Considerate men knew that a day of reckoning would come, but they believed it would be postponed until after the war was ended and the Union victorious.

"The policy of the legal-tender measure cannot therefore be properly determined if we exclude from view that which may well be termed its political and moral influence upon the mass of our people. It was this which subsequently gave to that form of currency a strong hold upon the minds of many who fancied that its stimulating effect upon business and trade could be

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reproduced under utterly different circumstances. Argument and experience have demonstrated the fallacy of this conception, and averted the evils which might have flowed from it. But in the judgment of a large and intelligent majority of those who were contemporary with the war and gave careful study to its progress, the legal-tender bill was a most effective and powerful auxiliary in its successful prosecution." [1]

[1] Twenty Years of Congress. James G. Blaine. Vol. I., pp. 427–429. Norwich, Conn.: The Henry Bill Publishing Company. 1884.

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CHAPTER X.

THE SILVER DOLLAR AND THE SILVER CERTIFICATE.

THE act of April 2, 1792, for establishing a mint and regulating the coinage of the United States, authorized the free coinage of a silver dollar of 412.5 grains, and this provision remained in force until 1873.

The act of June 28, 1834, which reduced the gold standard about six and one-fourth per cent., practically demonetized the silver coinage. Previous to the date of the passage of that act American gold and silver coins of all denominations were equally a legal tender, and the silver coins of less denomination than one dollar were chiefly in use, only $1,369,517 in silver dollars having been issued from the mint at that date. The act of 1834 overvalued the gold coinage, driving from the country the full-weight silver coins previously in circulation; and it may be confidently stated that from 1834 to 1873 no silver dollar-pieces had been presented at any custom-house in payment of duties. The entire customs-duties of the country during this period were, with the exception of silver used in *change*, paid in gold coin, and from this fund the interest paid upon the public debt has been chiefly derived; and it is not probable that during this time any of these silver dollar-pieces were used in this country in the payment of debt, except

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in certain cases of special contract, while thousands of millions in gold coin have been used to liquidate debts, both public and private. The average amount in silver dollar-pieces annually coined from 1834 to 1873 was about $160,000.

From 1793—the date of the first issue of silver coin by the United States—to 1834 the silver and the gold dollar were alike authorized to be received as legal tender in payment of debt, but silver alone circulated. Subsequently, however, silver was not used, except in fractional payments, or, since 1853, as a subsidiary coin. The silver coin, as a coin of circulation, had become obsolete. The reason why, prior to 1834, payments were made exclusively in silver, and subsequently to that date in gold, is found in the fact that prior to the legislation of 1834 the weight of fine silver in the silver dollar was fixed at fifteen times the weight of fine gold in the gold dollar; but after that date, owing to a reduction in the weight of gold required for the standard gold dollar, the silver dollar was made to contain of fine metal almost precisely sixteen times that of the new gold dollar, the actual market value of gold during the entire period having been greater than fifteen and less than sixteen times the value of silver of equal weight. During the earlier period, therefore, the standard silver coins were relatively the cheaper, and consequently circulated to the exclusion of the gold; while during the later period the standard gold coins were the cheaper, circulating to the exclusion of the silver.

The Coinage Act of 1873, by which the coinage of the silver dollar was discontinued, became a law on February 12th of that year. The act of February 28, 1878,

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which passed Congress by a two-thirds vote over the veto of President Hayes, again provided for the coinage of a silver dollar of 412.5 grains, the silver bullion to be purchased at the market price by the Government, and the amount so purchased and coined not to be less than two millions of dollars per month. During the debate on this bill the charge was repeatedly made, in and out of Congress, that the previous act of 1873, discontinuing the free coinage of the silver dollar, was passed surreptitiously. This statement has no foundation in fact.

The report of the writer, who was then Deputy Comptroller of the Currency, transmitted to Congress in 1870 by the Secretary, three times distinctly stated that the bill accompanying it proposed to discontinue the issue of the silver dollar-piece.[1] Various experts, to whom it had been submitted, approved this feature of the bill, and their opinions were printed by order of Congress. The House was informed by its members of this provision, and the bill was printed thirteen times by order of Congress, and once by the commissioners revising the statutes, and was considered during five successive sessions. If the question of the double standard did not become prominent in the discussion upon the bill, it was for the reason that usage had established the gold dollar as the unit, the silver dollar, on account of its greater relative value, having, with the Mexican dollar and the pistareen, disappeared from the circulation of the country. The Coinage Act of 1873[2] and the Revised Statutes of 1874 simply registered in the form of a statute what

[1] Senate, Mis. Doc. No. 132, XLI. Cong., 2d Sess.

[2] For the history of the Coinage Act of 1873, see pp. 170–175, Report of the Comptroller of the Currency for 1876.

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had been really the unwritten law of the land for nearly forty years.

It is not probable that any act passed by any Congress ever received more care in its preparation, or was ever submitted to the criticism of a greater number of practical and scientific experts[1] than was this Coinage Act of 1873. The statements in reference to the surreptitious or inadvertent passage of the bill was subsequently repeated in the city of Paris by a member of the Silver Commission.

A well-known scientific author[2] and writer on financial subjects, in criticising the report of the Paris Silver Commission, says:

"Another act which must have placed our commissioners at a moral disadvantage was their filing the humiliating plea that the act of 1873, demonetizing the silver dollar, was passed through inadvertence.

"It is difficult to see what this plea meant, what relation it had to the business of the conference, or what object was to be gained by raising it. If a proposed law can be debated in Congress for five years, be reported several times from committees in various forms, be recommended by the Secretary of the Treasury in at least one annual report, finally pass both Houses of Congress, and be signed by the President, then remain on the statute-books for two or three years without any one knowing it, and all through 'inadvertence,' what shall we say of our political system, or of the attention of

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[1] H. R., Ex. Doc. No. 307, XLI. Cong., 2d Sess.

[2] The Silver Commission and the Silver Question, by Professor Simon Newcomb: International Review, March, 1879.

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our people or our legislators to public affairs? Every one who cares for the good name of his country will certainly say, 'Try to keep the fact out of the newspapers, and by no means confess it to our neighbors.' The plea was as pointless as humiliating. Had our delegates frankly said that at the time of the passage of the act silver had long ceased to circulate in their country, except as a subsidiary coin; that, therefore, the legislation discontinuing its coinage and legal tender was, at the time, only a matter of form, the acceptance of a historical fact; but that the extraordinary fall in the price of silver which had occurred in the meantime had again called public attention to the subject, and convinced us that silver should be money of full power, and thus led us to retrace our steps, the statement would have been correct and frank, and would have produced a much better effect than did the plea actually put forward."

The act of February 28, 1878, also authorized the holder of these silver dollars to deposit the same with the Treasurer, or any Assistant Treasurer, of the United States, in sums not less than ten dollars, and receive therefor certificates of not less than ten dollars each, corresponding with the denominations of the United States notes. It required that the coin deposited or representing the certificates should be retained in the treasury for the payment of the same on demand, and that said certificates should be receivable for customs, taxes, and all public dues, and also authorized their reissue. This act did not authorize their use as clearing-house certificates, nor make them available as lawful reserve for the national banks. The following table shows the amount of standard silver dollars coined under the act of

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February 28, 1878, the amount in the treasury, and the amount of silver certificates outstanding on July 1st, from 1878 to 1884, and on January 1, 1885:

Years.	Coinage.	Amount in treasury.	Silver certificates outstanding.
1878	$8,573,500	$7,718,357	$1,850,410
1879	35,801,000	28,358,589	2,529,950
1880	63,734,750	45,108,296	12,374,270
1881	91,372,605	63,349,300	55,166,530
1882	119,144,780	87,524,182	66,096,096
1883	147,255,899	111,914,019	88,616,831
1884	175,355,829	135,560,916	96,427,011
1885, January 1	189,561,994	146,502,865	114,865,911

This table exhibits the rapid increase in the coinage of the silver dollar and in the issue of silver certificates. The law requires the purchase of not less than two millions of silver bullion each month for coinage into silver dollars. It provides for a forced coinage of silver dollars at the expense of the gold coin in the treasury; and the various efforts to repeal this law have been fruitless. If not repealed the result will be, not long hence, the demonetization of the gold coin which is now the standard, and the substitution of the silver dollar in place thereof. This law would doubtless have been repealed long since if silver certificates had not been issued in place of the silver dollar, the latter coin becoming unpopular when forced upon a people so long accustomed to a paper medium. The silver certificate, which is a substitute for the cumbrous dollar, performs every service of the coin itself, with a single exception. It is not a legal tender in payments between individuals, but it is receivable in payment of *all* public dues, may be included in the reserves of the banks, and used in the payment of clearing-house

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balances. Even the legal-tender note is not and never has been authorized to be received in payment of customs duties.

The cost of the transportation of gold coin between remote points is so great that many millions of gold coin have been exchanged during the last two years for paper silver certificates, the treasury itself, without any special authority of law, encouraging in this way the circulation of this inferior medium, which is issued against deposits of silver dollars only, thus rendering this otherwise undesirable silver coinage available for use by the banks and the people.

In the opinion of those who believe in a single gold standard, the silver certificate is a most dangerous substitute for money. The recent decision of the Supreme Court places in Congress the power to increase the issue of legal-tender notes at all times, and there is great danger that every commercial crisis or sudden panic, or cry of hard times, may be succeeded by legislation which shall increase the issue of the greenback and reduce its value even below the level of the silver certificate; the former being a promise to pay dollars either gold or silver, while the latter represents the silver coin itself safely stored in the vaults of the treasury.

The Government may at any time bring the nation upon the silver standard by declining to make payments or to redeem the legal-tender notes in gold, thus taking from the holder the option of payment. In such an event the hoard of coin will not be increased by customs duties paid in gold as at present, but by the return of silver dollars and silver certificates and legal-tender

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notes, thus demonetizing all of the gold coin of the country, and advancing prices to the level of the silver standard.

The act of July 12, 1882, authorized and directed the Secretary of the Treasury to receive deposits of gold coin in denominations of not less than $20 each, corresponding with the denominations of the United States notes. The coin deposited for the certificates is required to be retained for the payment of the same on demand, and these certificates, and also silver certificates, are authorized to be counted as part of the lawful reserve of the national banks. The act also provides, notwithstanding the fact that these issues are not a legal tender, that no national banking association shall be a member of any clearing-house in which such certificates shall not be receivable in the settlement of clearing-house balances.

The amount of gold certificates which have been issued under the act of July 12, 1882, was, on November 1, 1883, $21,790,000; on April 1, 1884, $87,874,500; and on January 1, 1885, $117,050,170.

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CHAPTER XI.

THE LEGAL-TENDER CASES IN THE SUPREME COURT OF THE UNITED STATES.

On April 30, 1866, the Legislature of New York provided by law for refunding to the banks and other corporations in like condition, the taxes of 1863 and 1864 collected upon that part of their capital invested in securities of the United States exempt by law from taxation. The Board of Supervisors of the County of New York was charged with the duty of auditing and allowing, with the approval of the Mayor of the city and the Corporation Counsel, the amount collected from each corporation for taxes on the exempt portion of its capital, together with costs, damages, and interest. This act was passed in conformity with the decisions of the United States Supreme Court in Bank of Commerce *vs.* New York City (reported in 2 Black, 620), and in the Bank Tax Case (reported in 2 Wallace, 200), which decided that a tax on banking capital invested in Government securities—being a tax on the obligations of the United States, by State authority—was void. The Bank of New York presented a claim to the said Board of Supervisors for the refunding of those taxes which the bank had paid on the United States notes commonly called "greenbacks" during the years aforesaid. The Board refused the ap-

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plication on the ground that "greenbacks" were not "securities" of the United States Government, but were practically and in effect "money," taxable as cash. The Court of Appeals of the State of New York sustained the action of the Board, but on appeal to the United States Supreme Court (Bank *vs.* The Supervisors, 7 Wallace, 26), that court, at its December term, 1868, reversed the opinion of the State court.

The court said: "The act of February, 1862, declares that 'All United States bonds and other securities of the United States held by individuals, associations, or corporations within the United States, shall be exempt from taxation by or under State authority.' We have already said that these notes are obligations. They bind the national faith. They are, therefore, strictly securities. They secure the payment stipulated to the holders by the pledge of the national faith, the only ultimate security of all national obligations, whatever form they may assume."

On June 20, 1860, a certain Mrs. Hepburn made a promissory note, by which she promised to pay to Henry Griswold, on February 20, 1862, eleven thousand two hundred and fifty "dollars." At the time when the note was made, and also at the time when it fell due, there was, confessedly, no lawful money of the United States, or money which could be lawfully tendered in payment of private debts, but gold and silver coin. Five days after the day when the note by its terms fell due, that is to say, on February 25, 1862, Congress passed the first legal-tender act, commonly so called, by which the United States notes issued thereunder were made a legal tender for "all debts, public and private, within the United States,"

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except certain public debts. In March, 1864, Mrs. Hepburn, having been sued on the note in the Louisville Chancery Court, in the State of Kentucky, tendered payment of the debt, principal and interest, in the United States notes issued under this act. The amount tendered, $11,250 in legal-tender notes, at that time was worth only about $7,000 in coin. The tender was refused. The notes were then tendered and paid into court. It was declared by the Chancellor to be a satisfaction of the debt. The case was appealed to the Court of Errors of Kentucky. That court reversed the Chancellor's decision, and ordered a contrary judgment to be entered. Whereupon Mrs. Hepburn took the case to the United States Supreme Court, where it was first argued upon printed briefs at the December term, 1867, and afterward reargued by very numerous and able counsel at the December term, 1868, but not decided until the December term, 1869 (Hepburn *vs.* Griswold, 8 Wallace, 603). The court was comprised of Mr. Chief Justice Chase and Associate Justices Nelson, Clifford, Field, Grier, Davis, Miller, and Swayne. Mr. Justice Grier resigned before the opinion of the court was announced, but agreed with the majority in the consultation room, as was announced by the Chief Justice. The Chief Justice delivered the opinion of the court. In this opinion Justices Nelson, Clifford, and Field concurred. The court held that the language of the act of February 25, 1862, making the United States notes issued thereunder "a legal tender in payment of all debts, public and private, within the United States," included pre-existing debts as well as debts which should be incurred after the passage of the act, and while it might be an

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exercise of rightful power in Congress, under the powers granted it by the Constitution, to declare war, suppress insurrection, raise and support armies and navies, borrow money on the credit of the United States to pay the debts of the Union, and to provide for the common defence and general welfare—to emit bills of credit or United States notes intended to circulate as money, and make the same legal tender for debts to be incurred after the passage of the act, yet inasmuch as the act by construction declared these notes to be legal tender in payment of pre-existing debts, that the act was inconsistent with the spirit of the Constitution, and was not a law "necessary and proper" for carrying into execution the powers vested by the Constitution in Congress or in the Government of the United States. The Constitution reads that Congress shall have, besides certain powers granted in express terms, "power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or offices thereof." The court held that the legal-tender clause was unnecessary and improper; that the notes would have maintained themselves equally well without it. The Chief Justice quoted the fact that the three hundred millions of dollars in notes issued by the national banking associations under the act of February, 1863, and the fifty millions of fractional currency issued under the act of March, 1863, were not made a legal tender, and argued that it was the quality of receivability for public dues, and not the quality of legal tender which made these United States notes circulate as freely as they did. The Chief Justice declared that the

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act was obnoxious to those clauses of the Constitution, also, which forbade the impairment of the obligations of contracts, the taking of private property for public use without compensation, and the deprivation of any person of his property without due process of law. And that the Constitution was ordained to "establish justice," which this act did not do, so far as regards pre-existing debts. For all of which reasons, elaborately stated, the court held the act unconstitutional and therefore void.

Mr. Justice Miller, with whom concurred Justices Davis and Swayne, delivered a dissenting opinion. He held that what was "necessary and proper" to carry into execution the powers vested by the Constitution in the Government of the United States, cannot rightfully be construed to mean only such legislation as is indispensably necessary, but that Congress has the choice of means, and is empowered to use any means which are, in fact, conducive to the exercise of the power granted or calculated to produce the end desired. He fortified this position by the clear, strong decisions of the court delivered by Chief Justice Marshall, who announced this exposition of the Constitution in United States *vs.* Fisher (2 Cranch, 358) and in McCulloch *vs.* The State of Maryland (4 Wheaton, 316). He further said that, while the Constitution forbade any State from impairing the obligation of a contract, it said nothing about the power of Congress in the premises. And that the provision that private property should not be taken for public use without due compensation, nor any person be deprived of his property without due course of law, had no application to the indirect ef-

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fect of great public measures whereby lands, stocks, contracts, etc., might depreciate in value, because, for instance, such an effect would doubtless succeed an immediate abolition of the tariff on iron by depreciating the value of furnaces and the capital employed in its manufacture, and yet no one would claim that such a repeal was therefore unconstitutional and void. That the whole argument of the injustice of the law and of its being opposed to the spirit of the Constitution was too abstract and intangible for application to courts of justice. That the act was passed to save the life of the Government, to pay its soldiers and sailors, and other public debts. That the legal-tender clause was considered "necessary and proper" by Congress, and that the courts had no right to interfere with that discretion. "It would authorize this court to enforce theoretical views of the genius of the Government, or vague notions of the spirit of the Constitution and of abstract justice, by declaring void laws which did not square with those views. It substitutes our ideas of policy for judicial construction, an undefined code of ethics for the Constitution, and a court of justice for the National Legislature."

One Parker (Legal-Tender Cases, 12 Wallace, 457) was under contract to convey a lot of land to one Davis, upon payment of a certain sum of money. The contract was dated, and suit was brought upon it before the passage of any of the legal-tender acts. After their passage, to wit, in February, 1867, the Supreme Court of Massachusetts decreed that Davis should pay into court a certain sum of money, and that Parker should thereupon execute a deed to him for the land in question. Davis accordingly paid into court the given sum in

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United States notes. Parker refused to execute the deed on the ground that he was entitled to coin ; whereupon the court changed the decree, and ordered that Parker should execute the deed upon payment by Davis into court of the specificed sum in United States notes.

From that decree the case was appealed to the United States Supreme Court. The case was argued at its December term, 1870, and decided on May 1, 1871; and on January 15, 1872, the opinion of the court was delivered by Justice Strong, who, with Justice Bradley, had been added to the court in 1870, by President Grant, making a full bench of nine. The other justices had sat in the case of Hepburn *vs.* Griswold. The court overruled the latter case and held the legal-tender acts to be constitutional both as respects contracts made before their enactment as well as after. The court said, in reference to the case of Hepburn *vs.* Griswold: "That case was decided by a divided court, and by a court having a less number of judges than the law then in existence provided that this court shall have. These cases have been heard before a full court, and they have received our most careful consideration."

Mr. Justice Bradley, in his separate concurring opinion, said: "And in this case, with all deference and respect for the former judgment of the court, I am so fully convinced that it was erroneous and prejudicial to the rights, interests, and safety of the general Government, that I, for one, have no hesitation in reviewing and overruling it. It should be remembered that this court, at the very term in which, and within a few weeks after, the decision in Hepburn *vs.* Griswold was delivered, when the vacancies on the bench were filled, determined to

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hear the question reargued. This fact must necessarily have had the effect of apprising the country that the decision was not fully acquiesced in, and of obviating any injurious consequences to the business of the country by its reversal."

Justice Strong, in delivering the opinion of the court, reiterated and enforced the arguments made by the minority in Hepburn *vs.* Griswold. He held that the distinction made by the Chief Justice in regard to the constitutional validity of the act as to debts contracted after its passage and debts contracted before, was not well founded, and that the fundamental question was, Can Congress constitutionally give to United States notes the character and quality of money? If they can, then such notes can be made legally available to fulfil all contracts solvable in money, without reference to the time when such contracts were made, unless expressly otherwise provided.

It was not insisted that Congress might make money of that which possessed no value. "What we do assert is, that Congress has power to enact that the Government's promises to pay money shall be, for the time being, equivalent in value to the representative of value determined by the coinage acts, or to multiples thereof." And that, therefore, all contracts calling for "dollars" simply, can be legally fulfilled by a tender of the Government's promises to pay dollars, by force of the legal-tender acts, without regard to date. And on this point Mr. Justice Bradley, in his concurring opinion, after noticing that life, liberty, and property are equally subject to be impaired, from the exercise of undoubted national powers in times of emergency or necessity,

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says: "So with the power of the Government to borrow money, a power to be exercised by the consent of the lender, if possible, but to be exercised without his consent if necessary. And when exercised in the form of legal-tender notes or bills of credit, it may operate for the time being to compel the creditor to receive the *credit of the Government* in place of the gold which he expected to receive from his debtor. All these are fundamental political conditions on which life, property, and money are respectively held and enjoyed under our system of government, nay, under any system of government. There are times when the exigencies of the State rightly absorb all subordinate considerations of private interest, convenience, or feeling; and at such times the temporary, though compulsory, acceptance by a private creditor of the Government credit, in lieu of his debtor's obligation to pay, is one of the slightest forms in which the necessary burdens of society can be sustained. Instead of being a violation of such obligation, it merely subjects it to one of those conditions under which it is held and enjoyed."

The Chief Justice, with whom concurred Justices Nelson, Field, and Clifford, delivered a dissenting opinion. He strenuously maintained his former views, as did also Justices Field and Clifford, in separate opinions. The burden of their argument was, that the Constitution forbade any State to make anything but gold and silver a legal tender, and granted to the Government only the right to coin this gold and silver, and regulate the value thereof and of foreign coin. And while the power to emit treasury notes was conceded as one means of borrowing money, yet that Congress had no right to make

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such notes money, or legal tender as money. Mr. Justice Clifford showed that the words "and emit bills on the credit of the United States" were originally reported in article seven, in the draft of the Constitution as submitted to the convention. Mr. Morris moved to strike the clause out on the ground that it was unnecessary, and a vicious suggestion of a power which would be unquestionably used anyhow without it. Mr. Madison thought it would be sufficient to let the clause remain, as it did not contain the hurtful power to make such bills legal tender, but finally voted in favor of striking out the clause entirely as was done, as eliminating even a "*pretext for a paper currency, and particularly for making the bills a tender either for public or private debts*," without disabling the Government from the use of treasury notes.

One Juilliard, a citizen of New York, made a sale of cotton to one Greenman, the defendant, who is a citizen of Connecticut, in April, 1879, for $5,122.90, payable on delivery. The defendant tendered in payment $5,100 in United States notes of the series of 1878, which had been redeemed and reissued under the act of May 31, 1878, and $22.90 in gold and silver coin. The coin was accepted, but the tender of the United States notes was rejected, and Juilliard claims judgment for $5,100 with interest and costs. The case was submitted in the United States Circuit Court at New York in June without assignment, and a *pro forma* decision was rendered for the defendant, whereupon the plaintiff appealed to the Supreme Court.

The opinion of the court in the first legal-tender case submitted, which was concurred in by five judges out of

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eight, was that at no time could Congress constitutionally give the quality of legal tender to United States notes. Then came the decision of the United States Supreme Court, after the number of judges had been increased to nine, making these notes a legal tender for all debts, whether contracted before the passage of the legal-tender act or after that date. The constitutionality of the legal-tender acts was based upon the war powers of Congress, leaving the question still open whether said notes could be issued in time of peace.

The decision of the Supreme Court delivered during the present term, which has been concurred in by eight judges, with but one dissentient, holds that under the Constitution Congress has power, if it deems it expedient, to issue legal-tender notes to any amount either in time of peace or war.

The opinion of the court and the dissenting opinion are given in the Appendix.

Since these opinions were rendered, resolutions have been introduced in the present Congress, both in the Senate and the House, proposing an amendment of the Constitution in regard to the issue of legal-tender paper money. As the Constitution provides that amendments to it shall be concurred in by a vote of two-thirds of each House, and subsequently ratified by three-fourths of the Legislatures of the several States, it is probable that the questions presented in this volume will continue to be discussed, both in Congress and by the people for many years to come.

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CHAPTER XII.

THE DISTRIBUTION OF THE SURPLUS AMONG THE STATES.

THE following historical sketch is properly included in this volume, not alone on account of the recent discussion of similar propositions and the introduction of similar measures in Congress, but also for the reason, as may be seen by reference to Chapter VI., that the distribution of the surplus was the immediate cause of the issue of treasury notes during the period of the financial crisis of 1837.

The report of the Secretary of the Treasury, William H. Crawford, for 1816, and his reports and those of his successor, Richard Rush, for succeeding years up to 1827, had in the estimates made shown an available surplus of revenues over all expenditures of from two to six millions of dollars. This led to some discussion as to the best method of employing this surplus. Secretary Crawford suggested in 1816 that it be used in internal improvements.

In 1827 the first proposition to distribute the surplus was made in Congress. A bill for the distribution of $5,000,000 annually for four years was introduced and laid on the table. On motion of Mr. Dickerson, of New Jersey, the author of the measure, it was taken up for discussion. He stated its principal object to be to pro-

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vide the States with money for educational and internal improvements. But Congress adjourning soon afterward, it received but little attention.

The Secretary of the Treasury (Ingham), in his report to Congress in December, 1829, estimated that the revenues of the Government for that year would amount, including the balance on hand on January 1st, to $30,574,666, and the expenditures to $26,164,595, of which $9,841,011 was on account of principal and $2,563,994 on account of interest of the public debt. He also estimated that the public revenue for the next five years would be such as to leave free for application to the payment of the public debt about twelve millions yearly. The amount of debt becoming due or payable during the next five years was $48,522,869. The surplus, after paying this indebtedness, would be twelve millions. The Secretary did not favor a sudden change in the tariff, but recommended such gradual changes as would reduce the revenues to correspond with the existing expenditure.

President Jackson, in his message to Congress in 1829, said: "After the extinction of the public debt, it is not probable that any adjustment of the tariff, upon principles satisfactory to the people of the Union, will, until a remote period, if ever, leave the Government without a considerable surplus in the treasury beyond what may be required for its current service. As, then, the period approaches when the application of the revenue to the payment of debt will cease, the disposition of the surplus will present a subject for the serious deliberation of Congress, and it may be fortunate for the country that it is yet to be decided. Considered in

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connection with the difficulties which have heretofore attended appropriations for purposes of internal improvement, and with those which this experience tells us will certainly arise whenever power over such subjects may be exercised by the general Government, it is hoped that it may lead to the adoption of some plan which will reconcile the diversified interests of the States, and strengthen the bonds which unite them. Every member of the Union, in peace and in war, will be benefited by the improvement of inland navigation and the construction of highways in the several States. Let us, then, endeavor to attain this benefit in a mode which will be satisfactory to all. That hitherto adopted has, by many of our fellow-citizens, been deprecated as an infraction of the Constitution, while by others it has been viewed as inexpedient. All feel that it has been employed at the expense of harmony in the legislative councils. To avoid these evils, it appears to me that the most safe, just, and federal disposition which could be made of the surplus revenue, would be its apportionment among the several States according to their ratio of representation ; and should this measure not be found warranted by the Constitution, that it would be expedient to propose to the States an amendment authorizing it. I regard an appeal to the source of power, in cases of real doubt, and where its exercise is deemed indispensable to the general welfare, as among the most sacred of all our obligations."

It thus appears that President Jackson regarded as unconstitutional the appropriation of money for internal improvements by Congress, and, in view of the anticipated surplus, suggested that its distribution

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among the States will enable them to make such improvements without the assistance of Congress. He intimated that such a distribution would be constitutional, but if there was any doubt on this point, an amendment would remove the difficulty. During the session of Congress of 1829–30, the duties on tea, coffee, cocoa, salt, and also on tonnage, were reduced, but the reductions were not sufficient to exhaust the surplus after the debt then maturing should be paid.

In his message for December, 1830, President Jackson referred to this subject as follows: "In my first message I stated it to be my opinion that it is not probable that any adjustment of the tariff, upon principles satisfactory to the people of the Union, will, until a remote period, if ever, leave the Government without a considerable surplus in the treasury beyond what may be required for its current services. I have had no cause to change this opinion, but much to confirm it." The Secretary of the Treasury, in his report for 1832, says: "After January 1, 1833, no part of the public debt, except the remaining fragments of the unfunded debt, of which only small portions are occasionally presented, will be redeemable before the following year; and, though there will be in the treasury during the year ample means to discharge the whole debt, they can be applied only to the purchase of stock at the market prices."

The whole public debt was virtually extinguished by January 1, 1835, on which date the balance of available funds in the treasury was $5,586,232. It was estimated that for the year 1835 the receipts from all sources would be twenty millions; the actual receipts were

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$35,430,087, the receipts from the sale of the public lands during that year having greatly increased. In 1834 these receipts were only $4,857,600, but in 1835 they were $14,757,600. The receipts from the sales of public lands in 1834–5–6 were $44,492,381, and the total receipts from this source, from 1796 to 1834, were but $44,595,000. The balance left in the treasury at the beginning of the year 1833 was $2,011,777; in 1834, $11,702,905; in 1835, $8,892,858, and on January 1, 1836, $26,749,803. In view of this large balance, and its probable large increase by January 1, 1837, the act of June 23, 1836, was passed, authorizing the distribution of the surplus among the States.

As has been seen, this method of disposing of the surplus was favorably suggested by President Jackson in his message for 1829, and again indorsed by him in his message for 1830. In 1836, however, the views of the President appear to have changed. Secretary Woodbury, in his report for 1835, disapproved of the distribution of the surplus among the States, intimating that it was unconstitutional. He said: "The people themselves, it is believed, can best manage all their own money which they and their representatives think may not be wanted for public purposes; and it would seem to be far preferable to leave it originally in their possession, than to withdraw it for the expensive operation of returning it substantially to the place whence it came, and that probably in a manner not conformable to the Constitution, till after the delay of procuring an amendment to it; and even then not expedient, because calculated injudiciously to strengthen the general Government, and to render the States more

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dependent on a great central power for yearly and important resources. Indeed, a reduction in the price of public lands, whose unusually large sales the past year are the source of most of the present surplus, would, if their sales should not thereby be much increased, seem another mode far more natural to obviate the present difficulty. But, before adopting it, this and various other considerations must be weighed, and it must be fully considered whether all the revenue anticipated from them at their present prices would not be necessary, after the great reductions in the tariff in 1842, and whether a resort to a higher tariff would not then become indispensable, if the average receipts from lands or customs should, from any new legislation, become then much diminished below the estimates which have been submitted on the present occasion."

This change of opinion of the Administration from 1829 to 1836 was probably owing to the hostility of the President to the Bank of the United States, resulting in the veto of the bill for renewal of its charter on July 10, 1832, and the removal of the United States deposits from the bank by order of the Secretary of the Treasury of September 26, 1833. In 1835 and 1836 the revenues of the Government were deposited with the State banks, the favorites of the Administration, and the distribution of the surplus at this time among the States would have deprived these banks of the deposits. In his message to Congress of 1836, after the passage of the act of June of that year, regulating the public deposits, and providing at the same time for the distribution of the surplus in the treasury on January 1, 1837, President Jackson said: "Without de-

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siring to conceal that the experience and observation of the last two years have operated a partial change in my views upon this interesting subject, it is nevertheless regretted that the suggestions made by me in my annual message of 1829 and 1830 have been greatly misunderstood. At that time the great struggle was begun against that latitudinarian construction of the Constitution which authorizes the unlimited appropriation of the revenues of the Union to internal improvements within the States, tending to invest in the hands, and place under the control, of the general Government all the principal roads and canals of the country, in violation of State rights and in derogation of State authority. At the same time the condition of the manufacturing interest was such as to create an apprehension that the duties on imports could not, without extensive mischief, be reduced in season to prevent the accumulation of a considerable surplus after the payment of the national debt. In view of the dangers of such a surplus, and in preference to its application to internal improvements, in derogation of the rights and powers of the States, the suggestion of an amendment of the Constitution to authorize its distribution was made. It was an alternative for what was deemed greater evils—a temporary resort to relieve an overburdened treasury until the Government could, without a sudden and destructive revulsion in the business of the country, gradually return to the just principle of raising no more revenue from the people, in taxes, than is necessary for its economical support. Even that alternative was not spoken of but in connection with an amendment of the Constitution."

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In the meantime Jackson, in his attack on the Bank of the United States, had been bitterly opposed by Clay, Calhoun, Webster, and a majority of both Houses of Congress, by whom many of his acts were regarded as an exercise of arbitrary power. In his first message in 1829 he recommended that the Bank of the United States should not be rechartered. In January, 1832, the bank's memorial for recharter was presented both in the House and Senate, and, after some debate, the bill for the recharter passed both Houses. This bill was vetoed, on July 10th, by the President, and the recharter of the bank was made one of the issues of the campaign of 1832. Henry Clay was defeated and Jackson re-elected, and the latter claimed that the result was an indorsement of his policy against the bank.

During the summer of 1832, Jackson, as a measure of hostility against the bank, conceived the project of the removal of the United States deposits. Benton, in his "Thirty Years' View" (vol. i., p. 377), says: "General Jackson was not the man to tolerate these illegalities, corruptions, and indignities. He therefore determined on ceasing to use the institution any longer as a place of deposit for the public moneys; and accordingly communicated his intention to the Cabinet, all of whom had been requested to assist him in his deliberations on the subject. The major part of them dissented from his design; whereupon he assembled them on September 22d and read to them a paper containing his views on this subject. This paper concludes as follows: 'Under these convictions he feels that a measure so important to the American people cannot be commenced too soon; and he therefore names the first day of October next as a period

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proper for the change of the deposits, or sooner, provided the necessary arrangements with the State banks can be made.'" Secretary Duane refused to carry out the wishes of the President without a previous reference to Congress. Roger B. Taney, then Attorney-General, was made Secretary of the Treasury, and issued the order for the removal of the deposits on September 26, 1833.

The opponents of the Administration, looking at the surplus revenue, regarded the propositions made for distribution of the surplus among the States favorably, as tending to deprive the President of a portion of an immense patronage. The deposit of the public money in the pet banks had been followed by great financial distress, continuing during the year 1834; and previous to and during that year propositions were frequently made in the public press for distribution of the surplus revenue among the States as a measure of relief. These propositions were first in the form of a distribution of the revenue from public land, then a distribution of the public lands themselves, and finally the distribution of both land and customs revenues.

During the session of 1835, on motion of Mr. Calhoun, a select committee, consisting of Calhoun, Webster, Benton, Bibb, Southard, and King, were appointed to inquire into the extent of executive patronage, the increase of public expenditures, and the number of persons employed or fed by the executive Government. The committee assumed that there would be an annual surplus of nine millions for the next eight years. It regarded the disposal of this surplus as a problem to be solved with great difficulty, but one which was import-

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ant to determine, lest the Executive should greatly increase his power by depositing the public funds with the favorite banks. The committee accordingly "reported a resolution so to amend the Constitution that the money remaining in the treasury at the end of each year, till January 1, 1843, deducting therefrom the sum of $2,000,000 to meet current and contingent expenses, shall annually be distributed among the States and Territories, including the District of Columbia; and, for that purpose, the sum to be distributed to be divided into as many shares as there are Senators and Representatives in Congress, adding two for each Territory and two for the District of Columbia; and that there shall be allotted to each State a number of shares equal to its representation in both Houses, and to the Territories, including the District of Columbia, two shares each. Supposing the surplus to be distributed should average $9,000,000 annually, as estimated, it would give to each share $30,405, which, multiplied by the number of Senators and Representatives from a State, will show the amount to which any State will be entitled."

This resolution was opposed by Benton, who represented the Administration in the Senate. He argued that the customs revenues could be largely reduced by changes in their methods of collection; that the revenues from the sale of land could be made to disappear by selling these lands at nominal prices to the people. If, after this, there should still be a surplus, he advocated its use in the construction of fortifications to protect the coasts and frontiers of the country. The proposition of the committee to amend the Constitution to authorize the distribution was never brought to a vote.

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In the spring of 1836 the following paragraph appeared in the *Philadelphia National Gazette:* "The great loss of the bank has been in the depreciation of the securities, and the only way to regain a capital is to restore their value. A large portion of them consists of State stocks, which are so far below their intrinsic worth that the present prices could not have been anticipated by any reasonable man. No doubt can be entertained of their ultimate payment. The States themselves, unaided, can satisfy every claim against them; they will do it speedily if Congress adopt the measures contemplated for their relief. A division of the public lands among the States, which would enable them all to pay their debts, or a pledge of the proceeds of sales for that purpose, would be abundant security. Either of these acts would inspire confidence and enhance the value of all kinds of property." A bill for the distribution of the revenues was introduced in the Senate, and supported both by Mr. Clay and Mr. Webster. It was opposed by Mr. Benton, who introduced an antagonistic bill devoting the surplus revenues to public defences. The bill passed the Senate by a vote of 25 to 20.

Being sent to the House for concurrence, it became evident that it could not pass that body, as a majority of its members regarded the project in its form of a distribution as unconstitutional. The friends of the measure in the Senate determined to change its form so as to remove the difficulty. Instead of a distribution it was to be a deposit, and the faith of the States was to be pledged to the return of the money. There was another bill in the Senate for regulating the deposit of

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public moneys with the State banks, and the proposition in the form of a deposit with the States became sections thirteen and fourteen of this bill, which passed with only six dissenting votes. It passed the House by a large majority, 155 to 38. In the form of distribution it had no chance of passing the House. "It was approved by the President," Benton says, "but with a repugnance of feeling and a recoil of judgment which it required great effort of friends to overcome." Probably, if he had returned it with his veto, it would have had two-thirds of each House in its favor.

The following is a copy of the thirteenth and fourteenth sections of the act of June 23, 1836: "An act to regulate the deposits of the public money." "Section 13. That the money which shall be in the treasury of the United States on the first day of January, eighteen hundred and thirty-seven, reserving the sum of five millions of dollars, shall be deposited with such of the several States, in proportion to their respective representation in the Senate and House of Representatives of the United States, as shall, by law, authorize their Treasurers, or other competent authorities, to receive the same on the terms hereinafter specified; and the Secretary of the Treasury shall deliver the same to such Treasurers, or other competent authorities, on receiving certificates of deposit therefor, signed by such competent authorities, in such form as may be prescribed by the Secretary aforesaid; which certificates shall express the usual and legal obligations, and pledge the faith of the State for the safe-keeping and repayment thereof, and shall pledge the faith of the States receiving the same, to pay the said moneys, and every part thereof, from time to time, whenever the same shall be

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required by the Secretary of the Treasury, for the purpose of defraying any wants of the public treasury, beyond the amount of the five millions aforesaid: *Provided*, that if any State declines to receive its proportion of the surplus aforesaid, on the terms before named, the same shall be deposited with the other States, agreeing to accept the same on deposit in the proportion aforesaid: *And provided, further*, that when said money, or any part thereof, shall be wanted by the said Secretary, to meet appropriations by law, the same shall be called for in ratable proportions, within one year, as nearly as conveniently may be, from the different States with which the same is deposited, and shall not be called for, in sums exceeding ten thousand dollars, from any one State, in any one month, without previous notice of thirty days for every additional sum of twenty thousand dollars which may at any time be required. Section 14. *And be it further enacted*, That the said deposits shall be made with the said States in the following proportions and at the following times, to wit: one-quarter part on the first day of January, eighteen hundred and thirty-seven, or as soon thereafter as may be; one-quarter part on the first day of April, one-quarter part on the first day of July, and one-quarter part on the first day of October, all in the same year."

In his message for December, 1836, President Jackson objected to the method of distribution provided in the law, viz., according to representation, and advocated a method founded on the population of each State.

On January 1, 1837, the surplus in the treasury, after reserving the five millions required by law, was $37,-

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468,859.97, and the apportionment among the several States is shown by the following table:

States.	Number of electoral votes.	Amount to be deposited during the year 1837.	First instalment.
Maine	10	$1,274,451.02	$318,612.75
New Hampshire	7	892,115.71	223,028.93
Massachusetts	14	1,784,231.43	446,057.86
Rhode Island	4	509,780.41	127,445.10
Vermont	7	892,115.71	223,028.93
Connecticut	8	1,019,560.81	254,890.20
New York	42	5,352,694.28	1,338,173.57
New Jersey	8	1,019,560.81	254,890.20
Pennsylvania	30	3,823,353.06	955,838.26
Delaware	3	382,335.31	95,583.83
Maryland	10	1,274,451.02	318,612.75
Virginia	23	2,931,237.34	732,809.03
North Carolina	15	1,911,676.53	477,919.13
South Carolina	11	1,401,896.12	350,474.03
Georgia	11	1,401,896.12	350,474.03
Alabama	7	892,115.71	223,028.93
Mississippi	4	509,780.41	127,445.10
Louisiana	5	637,225.51	159,306.38
Missouri	4	509,780.41	127,445.10
Kentucky	15	1,911,676.53	477,919.13
Tennessee	15	1,911,676.53	477,919.13
Ohio	21	2,676,347.14	669,086.78
Indiana	9	1,147,005.92	286,751.48
Illinois	5	637,225.51	159,306.38
Arkansas	3	382,335.31	95,583.83
Michigan	3	382,335.31	95,583.83
Total	....	$37,468,859.97	$9,367,214.98

The above table, with the exception of the last column, is copied from the report of Mr. Woodbury to Congress, of January 3, 1837. It will be noticed that by the law authorizing the deposit of the surplus, each State was required to authorize its Treasurer by

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law to receive the deposit and to give certificates of deposit therefor. The necessary forms for carrying out this plan were prepared by the Secretary of the Treasury, and may be found in Ex. Doc. and Reports of Committees, 1st Sess. 25th Congress, Doc. No. 30. All of the States named in the foregoing table of apportionment passed laws authorizing the receipt of the deposit, and some took the opportunity of instructing their representatives to protest against, or to endeavor to obtain changes in, some of the features of the law.

The Legislature of the State of New Hampshire, by resolution, declared that any distribution of surplus was unconstitutional. They instructed their delegates to vote for a reduction of revenue and against any measure for relinquishment, by the United States, of the sums on deposit with the States. The Legislature of the State of Indiana requested its Senators and Representatives to use their exertions to procure the passage of an act of Congress for the relinquishment, on the part of the United States, of all claims of surplus revenue deposits under act of June 23, 1836. These resolutions show conclusively that these States regarded the money received as a deposit to be likely to be recalled, and not as a gift.

The first three instalments were paid to the States as nearly as possible on the following dates, viz.: one-fourth on January 1, 1837, one-fourth on April 1st, and one-fourth on July 1st, following. The sums were paid by transfers from the deposit banks. On November 1, 1836, the Secretary of the Treasury notified the banks of the requisition which would be made upon them to meet the instalments due to the several States on January

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1st. On February 18, 1837, he gave similar notification in reference to the next three instalments. Forms of the letters sent to each of the deposit banks are given, also, in Document 30, September 26, 1837, before referred to. The instalments payable on January 1st, April 1st, and July 1st, were transferred to the States on or near those dates. They amounted in all to $28,101,645, and proportionate amounts were deposited with and receipted for by each State.

In May, 1837, the financial pressure became so great that the banks generally suspended specie payments. The fifth section of the act of June 23, 1836, for regulating the deposits of public money, provided that no bank shall be selected or continued as a place of deposit of public money which shall not redeem its notes and bills on demand in specie. On May 1, 1837, the number of the deposit banks was eighty-eight, distributed by States as follows:

Maine	8	North Carolina	1
New Hampshire	4	South Carolina	2
Vermont	2	Georgia	3
Massachusetts	6	Alabama	1
Connecticut	3	Mississippi	2
Rhode Island	2	Louisiana	2
New York	16	Tennessee	2
New Jersey	3	Kentucky	7
Pennsylvania	3	Ohio	9
Delaware	2	Indiana	1
Maryland	2	Illinois	1
District of Columbia	1	Michigan	2
Virginia	3		
		Total	88

The number of deposit banks on November 1, 1836, was eighty-nine. Their capital was $77,576,449; United States

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deposits, $49,377,986; other deposits, only $26,573,479.[1] The difficulties arising from the necessity of discontinuing as public depositories those banks which refused to pay specie, made it apparent that it would be very inconvenient, if not impossible, to transfer the fourth instalment of the deposit with the States.

Further legislation was deemed necessary in this emergency, and an extra session of Congress was called by President Van Buren. Congress met on September 4th. Among other reasons for the extra session, the President in his message mentioned that "questions were also expected to arise in the recess in respect to the October instalment of those deposits, requiring the interposition of Congress." Secretary Woodbury, in a report made on the safe-keeping of the public moneys, on September 23d, in answer to a resolution of the House of Representatives, said: "This last mode [viz., deposit with selected State banks] ceased by operation of law during the last spring, except in relation to five or six deposit banks which have continued to redeem their notes in specie. The direct losses sustained under it appear to be large. But, in the end, they are not considered likely to amount to anything, though the disappointments, delays, and injuries under it must, it is manifest, in several cases be great. The indirect losses to the public creditors and contractors have been considerable, and are difficult to be computed." From this it will be seen that only six out of the eighty-eight banks designated as public depositories on May 1st could be used as such in September.

[1] For statement of resources and liabilities of these banks, see Report of Comptroller of the Currency, p. 43. 1876.

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Benton says, in relation to these payments: "The deposit with the States had only reached its second instalment when the deposit banks, unable to stand a continued quarterly strain of near ten millions to the quarter, gave up the effort, and closed their doors. The first instalment had been delivered on January 1st, in specie or its equivalent; the second in April, also in valid money; the third one, demandable on July 1st, was accepted by the States in depreciated paper; and they were very willing to receive the fourth instalment in the same way. The Secretary's report shows that there would be a deficiency in the revenues to meet expenditures of over ten millions of dollars, which would render it necessary either to recall some of the money deposited with the States, or to postpone the payment of the fourth instalment due on October 1st. The Secretary mentioned the inconvenience of paying the fourth instalment, arising from the difficulty of transferring from the West and Southwest, where the money received from sales of public lands had accumulated. The lack of revenue was his principal reason for urging the withholding or postponement of the fourth instalment. Believing the money would be immediately necessary to the Government, he thought it would be less inconvenient to withhold payment than to pay and immediately recall."

On September 11, 1837, Mr. Silas Wright, from the Senate Committee on Finance, reported a bill which provided "that the transfer of the fourth instalment of deposits directed to be made with the States, under the thirteenth section of the act of June 23, 1836, be and the same is hereby postponed until further provision by law." The bill was brought up for consideration on the

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14th, when he said that, according to the report of the Secretary of the Treasury of the 28th ult., there was then in the treasury subject to draft, available and unavailable, but $8,100,000. If the expenses of the month of September were deducted, which were estimated at two and a half millions, there would be in the treasury, subject to draft on October 1st, less than six millions, without the transfer of a dollar to the States toward the October instalment. If the October instalment was to be transferred to the States, all the means in the treasury on the day when that instalment was made transferable would not be equal to two-thirds of the amount, and money must be borrowed upon the credit of the United States to supply the deficiency. The largest portion of the funds in the treasury was wholly unavailable; they were in the Western and Southwestern banks, and experience had already shown that the drafts of the Treasurer upon these banks would not be received in payment by the public creditors, neither would the States other than those in which the banks were located take these drafts, and give their obligations for a repayment of the amount in money in pursuance of the provisions of the deposit law. The transfer to the States, therefore, could not be made, even to the amount of the funds in the treasury subject to draft, by reason of the character of the funds to be drawn upon.

The whole means in the treasury on the first day of October next would be from three and a half to four millions less than the transfer required. If Congress should insist upon this transfer, it must authorize a loan of money upon the public credit in order that that money, when loaned, may be deposited with the States

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for safe-keeping. Mr. Webster thought that it was a mere question of convenience, the distributed money would go to all the people, and any deficiency in the treasury must be supplied by all the people. He thought the most convenient way was to pay the instalment, and provide for the necessities of the treasury by other means. Mr. Preston opposed the bill on the ground that many States had already appropriated the money, and had undertaken public works on the strength of it, etc. Mr. Crittenden, of Kentucky, opposed it on the same ground. By other Senators the deposit act was treated as a contract which the United States was bound to carry out.

Mr. Buchanan proposed an amendment, the effect of which was to change the character of the deposit act and make it a distribution measure. By the act it was the duty of the Secretary of the Treasury to call for a return of the deposit when needed by the Federal Treasury. The amendment superseded this, and enacted that the deposits should remain until called for by Congress. Mr. Niles pointed out the effect of this amendment. He said the majority of those who voted for the deposit act did so because it was a deposit and not a distribution, and merely withdrew the public moneys from the banks and deposited them with the States. The amendment would change the deposit to a loan, or, more properly, a grant, to the States. Mr. Buchanan's amendment, however, passed by a vote of 32 to 12, and thus the recall of the deposits already made was taken from the hands of the States and placed with Congress.

In the House of Representatives the disposition to regard the deposit act as a contract was even stronger than

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in the Senate. Mr. Caleb Cushing argued that it had all the features of a contract, that it was a "contract of deposit." It was a contract in honor, and, as far as there could be a contract between the United States and the States, a contract in law.

On the other hand, it was argued very forcibly that neither in honor nor in law was there any reason for paying the fourth instalment when there was no surplus in the treasury. Mr. Halsted, on the same side, said: "In reference to the deposit act, if a contract, it was a contract based alone upon the distribution of an existing surplus, not wanted for the ordinary or extraordinary expenditures of the Government. The structure was reared upon that rock, and was so understood at the time the statute was enacted. The money to be distributed was out of a surplus fund. Where was there a surplus fund? There was none."

The opponents of the bill, apart from the argument of contract, mainly founded their arguments on the fact that the States had been induced to undertake public works and other engagements by the promise of the money, and the inconvenience to which they would be put by withholding the fourth instalment. It was justly observed by their opponents that the States should have regulated their action by the actual terms of the law of Congress, to which they agreed when they accepted the deposits. The opposition to the bill was persistent, the debate was long, and many members were participants, among whom was Adams, of Massachusetts, Fillmore and Sibley, of New York, Bell, of Tennessee, and Wise, of Virginia. It finally passed the House by the close vote of 119 to 117. A motion to reconsider was made by

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Mr. Pickens, and carried. On reconsideration, Mr. Pickens moved to amend so that, instead of postponing the payment indefinitely until further action by Congress, it be postponed to January 1, 1839, a day certain. This amendment was agreed to and concurred in by the Senate, and the bill finally passed in that form.

The effect of the postponement of the payment to a fixed day has been held by some to bind the United States to such a payment; and the making the withdrawal of the first three instalments received by the States dependent on an act of Congress has, by the same kind of construction, been regarded by some as altering what was originally a deposit to a gift.

As January 1, 1839, approached, it became apparent that there would be no funds in the treasury available for the deposit of the postponed instalment. The Secretary of the Treasury, in his report for December, 1838, stated that the available balance on January 1, 1839, would be $2,765,342 only, and at the date of the report the treasury notes outstanding amounted to over $7,754,560. He said: "It will be perceived by these statements that no surplus balance will probably exist, either on January 1, 1839, or during that year, to be deposited with the several States for safe-keeping as a fourth instalment under the deposit act of June 23, 1836."

Since January 1, 1839, there has never been a time when the United States had in its treasury a surplus over and above all its debts and estimated expenditures. The amount deposited in the first three instalments with the States has always been carried as funds of the treasury unavailable; and under the terms of the acts rela-

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tive to its deposit, it could now be recalled at any time by an act of Congress.

General John A. Dix, Secretary of the Treasury, in a letter to the Chairman of the Committee of Ways and Means, of January 18, 1861, called attention to the fact that "there are deposited with twenty-six of the States, for safe-keeping, over twenty-eight millions of dollars belonging to the United States, for the payment of which the promise of these States is pledged by written instruments on file in this department. The annual statement of receipts and expenditures for the year ending June 30, 1860, represents this amount as part of 'the balance in the treasury' on that day. * * I refer to this final resource as an available one, should the public exigencies demand it. It is not doubted that the greater portion of the amount so deposited would be promptly and cheerfully paid should an exigency arise involving the public honor or safety. If, instead of calling for these deposits, it should be deemed advisable to pledge them for the repayment of any money the Government might find it necessary to borrow, loans contracted on such a basis of security, superadding to the plighted faith of the United States that of the individual States, could hardly fail to be acceptable to the capitalists."

It is easy to see that there can be no constitutional authority for the claim that this money, already in the possession of the States, irrevocably belongs to them, since, according to the Constitution, it is still in the treasury of the United States. The only method of taking money out of the treasury is by an appropriation by Congress, upon which the Secretary of the Treasury is

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authorized to issue his warrant, and no such method was ever adopted in relation to this money. The whole object and intention of the act was to deposit the surplus, not distribute it, as it has been seen that a distribution act was known at the time to be unconstitutional. Upon the delivery of the money the Treasurer of each State gave to the United States, not a receipt, but a *certificate of deposit*, subject to the future requisition of the Government. The amount of the deposit has always been held among the "unavailable funds of the treasury," and is annually so reported among other like funds, as may be seen by reference to page 383, Finance Report, 1882, and previous reports. But whether a deposit or a distribution, no constitutional method has been taken to authorize the payment of the money out of the treasury. Moreover, it was a deposit of surplus and surplus only, and when the surplus did not exist was suspended by act of Congress until a certain date; and when at that date there was still no surplus, the deposit was again withheld by the Executive, and, on the same principle, has been withheld ever since. Congress at any time can authorize the withdrawal of the whole amount from the States, and it doubtless could authorize the perpetual withholding of the fourth instalment in view of the fact that at some time in the future, after the national debt is paid, there may be a surplus similar to that which existed January 1, 1877.

Benton, in his "Thirty Years' View," thus refers to the use made of the deposits by the different States: "All sorts of plans were proposed for the employment of the money; and combinations, more or less interested or designing, generally carried the point in the universal

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scramble. In some States a pro rata division of the money per capita was made; and the distributive share of each individual, being but a few shillings, was received with contempt by some, and rejected with scorn by others. In other States it was divided among the counties, and gave rise to disjointed undertakings of no general benefit. Others, again, were stimulated, by the unexpected acquisition of a large sum, to engage in large and premature works of internal improvement, embarrassing the State with debt, and commencing works which could not be finished."

This paragraph conveys a wrong impression. It is generally believed that the moneys deposited by the Government with the different States were, for the most part, wasted or employed in works of internal improvement which were unnecessary. The data for a full investigation of this subject are not at hand, but it is known that the States of Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, Illinois, Indiana, Kentucky, Ohio, and Missouri appropriated a considerable portion of the income from this fund to the support of public schools; and that in some of these States the income from the whole fund has been from the commencement, and still is, devoted to the education of the people. In some instances the States used the funds for internal improvements, but provided by legislation for the appropriation of an amount equal to the interest for the support of public schools, which was similar to an investment in the bonds of the State.

A claim has been made within a few months (1884) upon the Secretary of the Treasury, under authority of

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an act passed by the Legislature of the State of Virginia, for the deposit of the amount of the fourth instalment ($732,809.33) under the act of June 23, 1836. A similar claim has also been made by the Treasurer of the State of Arkansas, through Senator Garland, of that State, to which the Secretary replied, on October 8, 1883: "I find that the tradition of this department for over a dozen years has been to consider that act as obsolete, or at least not imperatively effective during a season of large public federal indebtedness. I can for the present follow in the path of my predecessors in the office of the Secretary of the Treasury."

A petition was subsequently made to the Supreme Court of the United States, by the State of Virginia, through its properly authorized agent, for a writ of mandamus upon the Secretary of the Treasury, to compel him to pay to that State the amount of the fourth instalment of surplus alleged to be due under the provisions of the act of June 23, 1836. The court, on March 17, 1884, held that there was no case for a mandamus, and that the Secretary of the Treasury has no authority under existing legislation, and without further direction from Congress, to use the surplus revenue in the treasury, from whatever source derived, or whenever, since January 1, 1839, it may have accrued, for the purpose of making the fourth instalment of deposit required by the act of 1836.

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APPENDIX.

SUPREME COURT OF THE UNITED STATES.

No. 9.—October Term, 1883.

AUGUSTUS D. JUILLIARD, plaintiff in error, *vs.* THOMAS S. GREENMAN. In error to the Circuit Court of the United States for the Southern District of New York

Congress has the constitutional power to make the treasury notes of the United States a legal tender in payment of private debts in time of peace as well as in time of war.

Under the act of May 31, 1878, chapter 146, which enacts that notes of the United States issued during the war of the rebellion under acts of Congress declaring them to be a legal tender in payment of private debts, and since the close of that war redeemed and paid in gold coin at the treasury, shall be reissued and kept in circulation, notes so reissued are a legal tender.

[March 3, 1884.]

Mr. Justice GRAY delivered the opinion of the court.

Juilliard, a citizen of New York, brought an action against Greenman, a citizen of Connecticut, in the Circuit Court of the United States for the Southern District of New York, alleging that the plaintiff sold and delivered to the defendant, at his special instance and request, one hundred bales of cotton, of the value and for the agreed price of $5,122.90, and that the defendant agreed to pay that sum in cash on the delivery of the cotton, and had not paid the same, or any part thereof, except that he had paid the sum of $22.90 on account, and was now justly indebted to the plaintiff therefor in the sum of

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$5,100, and demanding judgment for this sum with interest and costs.

The defendant in his answer admitted the citizenship of the parties, the purchase and delivery of the cotton, and the agreement to pay therefor, as alleged; and averred that after the delivery of the cotton he offered and tendered to the plaintiff, in full payment, $22.50 in gold coin of the United States, forty cents in silver coin of the United States, and two United States notes, one of the denomination of $5,000 and the other of the denomination of $100, of the description known as United States legal-tender notes, purporting by recital thereon to be legal tender, at their respective face values, for all debts, public and private, except duties on imports and interest on the public debt, and which, after having been presented for payment, and redeemed and paid in gold coin, since January 1, 1879, at the United States sub-Treasury in New York, had been reissued and kept in circulation under and in pursuance of the act of Congress of May 31, 1878, chapter 146; that at the time of offering and tendering these notes and coin to the plaintiff the sum of $5,122.90 was the entire amount due and owing in payment for the cotton, but the plaintiff declined to receive the notes in payment of $5,100 thereof; and that the defendant had ever since remained, and still was, ready and willing to pay to the plaintiff the sum of $5,100 in these notes, and brought these notes into court, ready to be paid to the plaintiff if he would accept them.

The plaintiff demurred to the answer upon the grounds that the defence, consisting of new matter, was insufficient in law upon its face, and that the facts stated in the answer did not constitute any defence to the cause of action alleged.

The Circuit Court overruled the demurrer and gave judgment for the defendant, and the plaintiff sued out his writ of error.

The amount which the plaintiff seeks to recover, and which, if the tender pleaded is insufficient in law, he is entitled to recover, is $5,100. There can, therefore, be no doubt of the jurisdiction of this court to revise the judgment of the Circuit Court (act of February 16, 1875, ch. 77, sec. 3; 18 Stat., 315).

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The notes of the United States, tendered in payment of the defendant's debt to the plaintiff, were originally issued under the acts of Congress of February 25, 1862, ch. 33, July 11, 1862, ch. 142, and March 3, 1863, ch. 73, passed during the war of the rebellion, and enacting that these notes should "be lawful money and a legal tender in payment of all debts, public and private, within the United States," except for duties on imports and interest on the public debt (12 Stat., 345, 532, 709).

The provisions of the earlier acts of Congress, so far as it is necessary for the understanding of the recent statutes to quote them, are re-enacted in the following provisions of the Revised Statutes:

"SEC. 3579. When any United States notes are returned to the treasury, they may be reissued, from time to time, as the exigencies of the public interest may require.

"SEC. 3580. When any United States notes returned to the treasury are so mutilated or otherwise injured as to be unfit for use, the Secretary of the Treasury is authorized to replace the same with others of the same character and amounts.

"SEC. 3581. Mutilated United States notes, when replaced according to law, and all other notes which by law are required to be taken up and not reissued, when taken up shall be destroyed in such manner and under such regulations as the Secretary of the Treasury may prescribe.

"SEC. 3582. The authority given to the Secretary of the Treasury to make any reduction of the currency, by retiring and cancelling United States notes, is suspended."

"SEC. 3588. United States notes shall be lawful money and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt."

The act of January 14, 1875, chapter 15, "To provide for the resumption of specie payments," enacted, that on and after January 1, 1879, "the Secretary of the Treasury shall redeem in coin the United States legal-tender notes then outstanding, on their presentation for redemption at the office of the Assistant Treasurer of the United States in the city of New York, in

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sums of not less than fifty dollars;" and authorized him to use for that purpose any surplus revenues in the treasury and the proceeds of the sales of certain bonds of the United States (18 Stat., 296).

The act of May 31, 1878, chapter 146, under which the notes in question were reissued, is entitled "An act to forbid the further retirement of United States legal-tender notes," and enacts as follows:

"From and after the passage of this act it shall not be lawful for the Secretary of the Treasury or other officer under him to cancel or retire any more of the United States legal-tender notes. And when any of said notes may be redeemed or be received into the treasury under any law, from any source whatever, and shall belong to the United States, they shall not be retired, cancelled, or destroyed, but they shall be reissued and paid out again and kept in circulation: *Provided*, that nothing herein shall prohibit the cancellation and destruction of mutilated notes, and the issue of other notes of like denomination in their stead, as now provided by law. All acts and parts of acts in conflict herewith are hereby repealed" (20 Stat., 87).

The manifest intention of this act is that the notes which it directs, after having been redeemed, to be reissued and kept in circulation, shall retain their original quality of being a legal tender.

The single question, therefore, to be considered, and upon the answer to which the judgment to be rendered between these parties depends, is whether notes of the United States, issued in time of war, under acts of Congress declaring them to be a legal tender in payment of private debts, and afterward in time of peace redeemed and paid in gold coin at the treasury, and then reissued under the act of 1878, can, under the Constitution of the United States, be a legal tender in payment of such debts.

Upon full consideration of the case, the court is unanimously of opinion that it cannot be distinguished in principle from the cases heretofore determined, reported under the names of the

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Legal-tender Cases, 12 Wall., 457; Dooly *vs.* Smith, 13 Wall., 604; Railroad Company *vs.* Johnson, 15 Wall., 195; and Maryland *vs.* Railroad Company, 22 Wall., 105; and all the judges, except Mr. Justice Field, who adheres to the views expressed in his dissenting opinions in those cases, are of opinion that they were rightly decided.

The elaborate printed briefs submitted by counsel in this case, and the opinions delivered in the Legal-tender Cases, and in the earlier case of Hepburn *vs.* Griswold, 8 Wall., 603, which those cases overruled, forcibly present the arguments on either side of the question of the power of Congress to make the notes of the United States a legal tender in payment of private debts. Without undertaking to deal with all those arguments, the court has thought it fit that the grounds of its judgment in the case at bar should be fully stated.

No question of the scope and extent of the implied powers of Congress under the Constitution can be satisfactorily discussed without repeating much of the reasoning of Chief Justice Marshall in the great judgment in McCulloch *vs.* Maryland, 4 Wheat., 316, by which the power of Congress to incorporate a bank was demonstrated and affirmed, notwithstanding the Constitution does not enumerate, among the powers granted, that of establishing a bank or creating a corporation.

The people of the United States by the Constitution established a National Government, with sovereign powers, legislative, executive, and judicial. "The Government of the Union," said Chief Justice Marshall, "though limited in its powers, is supreme within its sphere of action;" "and its laws, when made in pursuance of the Constitution, form the supreme law of the land." "Among the enumerated powers of Government we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation are entrusted to its government" (4 Wheat., 405, 406, 407).

A constitution establishing a frame of government, declaring

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fundamental principles, and creating a national sovereignty, and intended to endure for ages, and to be adapted to the various crises of human affairs, is not to be interpreted with the strictness of a private contract. The Constitution of the United States, by apt words of designation or general description, marks the outlines of the powers granted to the National Legislature, but it does not undertake with the precision and detail of a code of laws to enumerate the subdivisions of those powers or to specify all the means by which they may be carried into execution. Chief Justice Marshall, after dwelling upon this view, as required by the very nature of the Constitution, by the language in which it is framed, by the limitations upon the general powers of Congress introduced in the ninth section of the first article, and by the omission to use any restrictive term which might prevent its receiving a fair and just interpretation, added these emphatic words: "In considering this question, then, we must never forget that it is a constitution we are expounding" (4 Wheat., 407. See also page 415).

The breadth and comprehensiveness of the words of the Constitution are nowhere more strikingly exhibited than in regard to the powers over the subjects of revenue, finance, and currency, of which there is no other express grant than may be found in these few brief clauses:

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

"To borrow money on the credit of the United States;

"To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

"To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures."

The section which contains the grant of these and other principal legislative powers concludes by declaring that the Congress shall have power "to make all laws which shall be

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necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

By the settled construction and the only reasonable interpretation of this clause the words "necessary and proper" are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously effect it.

That clause of the Constitution which declares that "the Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States" either embodies a grant of power to pay the debts of the United States, or presupposes and assumes that power as inherent in the United States as a sovereign government. But in whichever aspect it be considered, neither this nor any other clause of the Constitution makes any mention of priority or preference of the United States as a creditor over other creditors of an individual debtor. Yet this court, in the early case of United States *vs.* Fisher (2 Cranch, 358), held that under the power to pay the debts of the United States, Congress had the power to enact that debts due to the United States should have that priority of payment out of the estate of an insolvent debtor which the law of England gave to debts due to the crown.

In delivering judgment in that case Chief Justice Marshall expounded the clause giving Congress power to make all necessary and proper laws as follows: "In construing this clause it would be incorrect and would produce endless difficulties if the opinion should be maintained that no law was authorized which was not indispensably necessary to give effect to a specified power. Where various systems might be adopted for that purpose it might be said with respect to each that it was not necessary because the end might be obtained by other means.

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Congress must possess the choice of means, and must be empowered to use any means which are, in fact, conducive to the exercise of a power granted by the Constitution. The Government is to pay the debt of the Union, and must be authorized to use the means which appear to itself the most eligible to effect that object" (2 Cranch, 396).

In McCulloch *vs.* Maryland he more fully developed the same view, concluding thus: "We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the National Legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional" (4 Wheat., 421).

The rule of interpretation thus laid down has been constantly adhered to and acted on by this court, and was accepted as expressing the true test by all the judges who took part in the former discussions of the power of Congress to make the treasury notes of the United States a legal tender in payment of private debts.

The other judgments delivered by Chief Justice Marshall contain nothing adverse to the power of Congress to issue legal-tender notes.

By the articles of confederation of 1777, the United States in Congress assembled were authorized "to borrow money or emit bills on the credit of the United States;" but it was declared that "each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled" (Art. 2; Art. 9, Sec. 5; 1 Stat., 4, 7). Yet, upon the question whether, under those articles,

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Congress, by virtue of the power to emit bills on the credit of the United States, had the power to make bills so emitted a legal tender, Chief Justice Marshall spoke very guardedly, saying: "Congress emitted bills of credit to a large amount, and did not, perhaps could not, make them a legal tender. This power resided in the States" (Craig *vs.* Missouri, 4 Pet., 410, 435). But in the Constitution, as he had before observed in McCulloch *vs.* Maryland, "there is no phrase which, like the articles of confederation, excludes incidental or implied powers, and which requires that everything granted shall be expressly and minutely described. Even the tenth amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word 'expressly,' and declares only that the powers 'not delegated to the United States, nor prohibited to the States, are reserved to the States or to the people;' thus leaving the question whether the particular power which may become the subject of contest has been delegated to the one government or prohibited to the other to depend on a fair construction of the whole instrument. The men who drew and adopted this amendment had experienced the embarrassments resulting from the insertion of this word in the articles of confederation, and probably omitted it to avoid those embarrassments" (4 Wheat., 405, 406).

The sentence sometimes quoted from his opinion in Sturges *vs.* Crowninshield had exclusive relation to the restrictions imposed by the Constitution on the powers of the States, and especial reference to the effect of the clause prohibiting the States from passing laws impairing the obligation of contracts, as will clearly appear by quoting the whole paragraph: "Was this general prohibition intended to prevent paper money? We are not allowed to say so, because it is expressly provided that no State shall 'emit bills of credit;' neither could these words be intended to restrain the States from enabling debtors to discharge their debts by the tender of property of no real value to the creditor, because for that subject also particular provision is made. Nothing but gold and silver coin can be made a tender in payment of debts" (4 Wheat., 122, 204).

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Such reports as have come down to us of the debates in the convention that framed the Constitution afford no proof of any general concurrence of opinion upon the subject before us. The adoption of the motion to strike out the words "and emit bills" from the clause "to borrow money and emit bills on the credit of the United States" is quite inconclusive. The philippic delivered before the Assembly of Maryland by Mr. Martin, one of the delegates from that State, who voted against the motion, and who declined to sign the Constitution, can hardly be accepted as satisfactory evidence of the reasons or the motives of the majority of the convention (see 1 Elliot's Debates, 345, 370, 376). Some of the members of the convention, indeed, as appears by Mr. Madison's minutes of the debates, expressed the strongest opposition to paper money. And Mr. Madison has disclosed the grounds of his own action by recording that "this vote in the affirmative by Virginia was occasioned by the acquiescence of Mr. Madison, who became satisfied that striking out the words would not disable the Government from the use of public notes, so far as they could be safe and proper; and would only cut off the pretext for a paper currency, and particularly for making the bills a tender either for public or private debts."

But he has not explained why he thought that striking out the words "and emit bills" would leave the power to emit bills, and deny the power to make them a tender in payment of debts. And it cannot be known how many of the other delegates, by whose vote the motion was adopted, intended neither to proclaim nor to deny the power to emit paper money, and were influenced by the argument of Mr. Gorham, who "was for striking out, without inserting any prohibition," and who said: "If the words stand, they may suggest and lead to the emission." "The power, so far as it will be necessary or safe, will be involved in that of borrowing" (5 Elliot's Debates, 434, 435, and note). And after the first clause of the tenth section of the first article had been reported in the form in which it now stands, forbidding the States to make anything but gold or silver coin a tender in payment of debts, or to pass

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any law impairing the obligation of contracts, when Mr. Gerry, as reported by Mr. Madison, "entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the States from impairing the obligation of contracts, alleging that Congress ought to be laid under the like prohibitions," and made a motion to that effect, he was not seconded (ib., 546). As an illustration of the danger of giving too much weight upon such a question to the debates and the votes in the convention, it may also be observed that propositions to authorize Congress to grant charters of incorporation for national objects were strongly opposed, especially as regarded banks, and defeated (ib., 440, 543, 544). The power of Congress to emit bills of credit, as well as to incorporate national banks, is now clearly established by decisions to which we shall presently refer.

The words "to borrow money," as used in the Constitution, to designate a power vested in the National Government, for the safety and welfare of the whole people, are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes.

The power "to borrow money on the credit of the United States" is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the Government. It includes the power to issue, in return for the money borrowed, the obligations of the United States in any appropriate form, of stock, bonds, bills, or notes; and in whatever form they are issued, being instruments of the National Government, they are exempt from taxation by the governments of the several States (Western *vs.* Charleston City Council, 2 Pet., 449; Banks *vs.* Mayor, 7 Wall., 16; Bank *vs.* Supervisors, 7 Wall., 26). Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as

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currency, and to make them more current in the market, it may provide for their redemption in coin or bonds, and may make them receivable in payment of debts to the Government. So much is settled beyond doubt, and was asserted or distinctly admitted by the judges who dissented from the decision in the Legal-tender Cases, as well as by those who concurred in that decision (Veazie Bank *vs.* Fenno, 8 Wall., 533, 548; Hepburn *vs.* Griswold, 8 Wall., 616, 636; Legal-tender Cases, 12 Wall., 543, 544, 560, 582, 610, 613, 637).

It is equally well settled that Congress has the power to incorporate national banks, with the capacity, for their own profit as well as for the use of the Government in its money transactions, of issuing bills which under ordinary circumstances pass from hand to hand as money at their nominal value, and which, when so current, the law has always recognized as a good tender in payment of money debts, unless specifically objected to at the time of the tender (United States Bank *vs.* Bank of Georgia, 10 Wheat., 333, 347; Ward *vs.* Smith, 7 Wall., 447, 451). The power of Congress to charter a bank was maintained in McCulloch *vs.* Maryland, 4 Wheat., 316, and in Osborn *vs.* United States Bank, 9 Wheat., 738, chiefly upon the ground that it was an appropriate means for carrying on the money transactions of the Government. But Chief Justice Marshall said: "The currency which it circulates, by means of its trade with individuals, is believed to make it a more fit instrument for the purposes of government than it could otherwise be; and, if this be true, the capacity to carry on this trade is a faculty indispensable to the character and objects of the institution" (9 Wheat., 864). And Mr. Justice Johnson, who concurred with the rest of the court in upholding the power to incorporate a bank, gave the further reason that it tended to give effect to "that power over the currency of the country which the framers of the Constitution evidently intended to give to Congress alone" (ib., 873).

The constitutional authority of Congress to provide a currency for the whole country is now firmly established. In Veazie Bank *vs.* Fenno, 8 Wall., 533, 548, Chief Justice Chase,

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in delivering the opinion of the court, said: "It cannot be doubted that under the Constitution the power to provide a circulation of coin is given to Congress. And it is settled by the uniform practice of the Government, and by repeated decisions, that Congress may constitutionally authorize the emission of bills of credit." Congress, having undertaken to supply a national currency, consisting of coin, of treasury notes of the United States, and of bills of national banks, is authorized to impose on all State banks, or national banks, or private bankers, paying out the notes of individuals or of State banks, a tax of ten per cent. upon the amount of such notes so paid out (Veazie Bank *vs.* Fenno, above cited; National Bank *vs.* United States, 101 U. S., 1). The reason for this conclusion was stated by Chief Justice Chase, and repeated by the present Chief Justice, in these words: "Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it cannot be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. To this end, Congress has denied the quality of legal tender to foreign coins, and has provided by law against the imposition of counterfeit and base coin on the community. To the same end, Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile" (8 Wall., 549; 101 U. S., 6).

By the Constitution of the United States the several States are prohibited from coining money, emitting bills of credit, or making anything but gold and silver coin a tender in payment of debts. But no intention can be inferred from this to deny to Congress either of these powers. Most of the powers granted to Congress are described in the eighth section of the first article; the limitations intended to be set to its powers, so as to exclude certain things which might otherwise be taken to be included in the general grant, are defined in the ninth section; the tenth section is addressed to the States only. This section prohibits the States from doing some things which the United

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States are expressly prohibited from doing, as well as from doing some things which the United States are expressly authorized to do, and from doing some things which are neither expressly granted nor expressly denied to the United States. Congress and the States equally are expressly prohibited from passing any bill of attainder or *ex post facto* law, or granting any title of nobility. The States are forbidden, while the President and Senate are expressly authorized, to make treaties. The States are forbidden, but Congress is expressly authorized, to coin money. The States are prohibited from emitting bills of credit; but Congress, which is neither expressly authorized nor expressly forbidden to do so, has, as we have already seen, been held to have the power of emitting bills of credit, and of making every provision for their circulation as currency, short of giving them the quality of legal tender for private debts—even by those who have denied its authority to give them this quality.

It appears to us to follow, as a logical and necessary consequence, that Congress has the power to issue the obligations of the United States in such form, and to impress upon them such qualities as currency for the purchase of merchandise and the payment of debts, as accord with the usage of sovereign governments. The power, as incident to the power of borrowing money and issuing bills or notes of the Government for money borrowed, of impressing upon those bills or notes the quality of being a legal tender for the payment of private debts, was a power universally understood to belong to sovereignty, in Europe and America, at the time of the framing and adoption of the Constitution of the United States. The governments of Europe, acting through the monarch or the legislature, according to the distribution of powers under their respective constitutions, had and have as sovereign a power of issuing paper money as of stamping coin. This power has been distinctly recognized in an important modern case, ably argued and fully considered, in which the Emperor of Austria, as King of Hungary, obtained from the English Court of Chancery an injunction against the issue in England, without his license, of notes

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purporting to be public paper money of Hungary (Austria *vs.* Day, 2 Giff., 628, and 3 D. F. & J., 217). The power of issuing bills of credit, and making them, at the discretion of the legislature, a tender in payment of private debts, had long been exercised in this country by the several Colonies and States; and during the Revolutionary War the States, upon the recommendation of the Congress of the Confederation, had made the bills issued by Congress a legal tender (see Craig *vs.* Missouri, 4 Pet., 435, 453; Briscoe *vs.* Bank of Kentucky, 11 Pet., 257, 313, 334–336; Legal-tender Cases, 12 Wall., 557, 558, 622; Phillips on American Paper Currency, *passim*). The exercise of this power not being prohibited to Congress by the Constitution, it is included in the power expressly granted to borrow money on the credit of the United States.

This position is fortified by the fact that Congress is vested with the exclusive exercise of the analogous power of coining money and regulating the value of domestic and foreign coin, and also with the paramount power of regulating foreign and interstate commerce. Under the power to borrow money on the credit of the United States, and to issue circulating notes for the money borrowed, its power to define the quality and force of those notes as currency is as broad as the like power over a metallic currency under the power to coin money and to regulate the value thereof. Under the two powers, taken together, Congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, as regards the National Government or private individuals.

The power of making the notes of the United States a legal tender in payment of private debts being included in the power to borrow money and to provide a national currency, is not defeated or restricted by the fact that its exercise may affect the value of private contracts. If, upon a just and fair interpretation of the whole Constitution, a particular power or authority appears to be vested in Congress, it is no constitutional objection to its existence, or to its exercise, that the property or the contracts of individuals may be incidentally affected.

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The decisions of this court, already cited, afford several examples of this.

Upon the issue of stock, bonds, bills, or notes of the United States, the States are deprived of their power of taxation to the extent of the property invested by individuals in such obligations, and the burden of State taxation upon other private property is correspondingly increased. The ten per cent. tax imposed by Congress on notes of State banks and of private bankers not only lessens the value of such notes, but tends to drive them, and all State banks of issue, out of existence. The priority given to debts due to the United States over the private debts of an insolvent debtor diminishes the value of these debts, and the amount which their holders may receive out of the debtor's estate.

So, under the power to coin money and to regulate its value, Congress may (as it did with regard to gold by the act of June 28, 1834, ch. 95, and with regard to silver by the act of February 28, 1878, ch. 20) issue coins of the same denomination as those already current by law, but of less intrinsic value than those by reason of containing a less weight of the precious metals, and thereby enable debtors to discharge their debts by the payment of coins of the less real value. A contract to pay a certain sum in money, without any stipulation as to the kind of money in which it shall be paid, may always be satisfied by payment of that sum in any currency which is lawful money at the place and time at which payment is to be made (1 Hale, P. C., 192–194; Bac. Ab. Tender, B. 2; Pothier, Contract of Sale, No. 416; Pardessus, Droit Commercial, Nos. 204, 205; Searight *vs.* Calbraith, 4 Dall., 324). As observed by Mr. Justice Strong, in delivering the opinion of the court in the Legal-tender Cases, "Every contract for the payment of money, simply, is necessarily subject to the constitutional power of the Government over the currency, whatever that power may be, and the obligation of the parties is, therefore, assumed with reference to that power" (12 Wall., 549).

Congress, as the legislature of a sovereign nation, being expressly empowered by the Constitution "to lay and collect

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taxes, to pay the debts and provide for the common defence and general welfare of the United States," and "to borrow money on the credit of the United States," and "to coin money and regulate the value thereof and of foreign coin;" and being clearly authorized, as incidental to the exercise of those great powers, to emit bills of credit, to charter national banks, and to provide a national currency for the whole people, in the form of coin, treasury notes, and national bank bills; and the power to make the notes of the Government a legal tender in payment of private debts being one of the powers belonging to sovereignty in other civilized nations, and not expressly withheld from Congress by the Constitution; we are irresistibly impelled to the conclusion that the impressing upon the treasury notes of the United States the quality of being a legal tender in payment of private debts is an appropriate means, conducive and plainly adapted to the execution of the undoubted powers of Congress, consistent with the letter and spirit of the Constitution, and therefore, within the meaning of that instrument, "necessary and proper for carrying into execution the powers vested by this Constitution in the Government of the United States."

Such being our conclusion in matter of law, the question whether at any particular time, in war or in peace, the exigency is such, by reason of unusual and pressing demands on the resources of the Government, or of the inadequacy of the supply of gold and silver coin to furnish the currency needed for the uses of the Government and of the people, that it is, as matter of fact, wise and expedient to resort to this means, is a political question, to be determined by Congress when the question of exigency arises, and not a judicial question, to be afterward passed upon by the courts. To quote once more from the judgment in McCulloch *vs.* Maryland: "Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground" (4 Wheat., 423).

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It follows that the act of May 31, 1878, ch. 146, is constitutional and valid; and that the Circuit Court rightly held that the tender in treasury notes, reissued and kept in circulation under that act, was a tender of lawful money in payment of the defendant's debt to the plaintiff.

Judgment affirmed.

Mr. Justice FIELD wrote a dissenting opinion, as follows:

From the judgment of the court in this case, and from all the positions advanced in its support, I dissent. The question of the power of Congress to impart the quality of legal tender to the notes of the United States, and thus make them money and a standard of value, is not new here. Unfortunately, it has been too frequently before the court, and its latest decision, previous to this one, has never been entirely accepted and approved by the country. Nor should this excite surprise; for whenever it is declared that this Government, ordained to establish justice, has the power to alter the condition of contracts between private parties, and authorize their payment or discharge in something different from that which the parties stipulated, thus disturbing the relations of commerce and the business of the community generally, the doctrine will not and ought not to be readily accepted. There will be many who will adhere to the teachings and abide by the faith of their fathers. So the question has come again, and will continue to come until it is settled so as to uphold and not impair the contracts of parties, to promote and not defeat justice.

If there be anything in the history of the Constitution which can be established with moral certainty, it is that the framers of that instrument intended to prohibit the issue of legal-tender notes both by the general Government and by the States; and thus prevent interference with the contracts of private parties. During the Revolution and the period of the old Confederation, the Continental Congress issued bills of credit, and upon its recommendation the States made them a legal tender, and the refusal to receive them an extinguishment of the debts for which they were offered. They also enacted severe penalties

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against those who refused to accept them at their nominal value, as equal to coin, in exchange for commodities. And previously, as early as January, 1776, Congress had declared that, if any person should be "so lost to all virtue and regard for his country" as to refuse to receive in payment the bills then issued, he should, on conviction thereof, be "deemed, published, and treated as an enemy of his country, and precluded from all trade and intercourse with the inhabitants of the colonies."

Yet, this legislation proved ineffectual; the universal law of currency prevailed, which makes promises of money valuable only as they are convertible into coin. The notes depreciated until they became valueless in the hands of their possessors. So it always will be; legislative declaration cannot make the promise of a thing the equivalent of the thing itself.

The legislation to which the States were thus induced to resort was not confined to the attempt to make paper money a legal tender for debts; but the principle that private contracts could be legally impaired, and their obligation disregarded, being once established, other measures equally dishonest and destructive of good faith between parties were adopted. What followed is thus stated by Mr. Justice Story, in his "Commentaries:"

"The history, indeed," he says, "of the various laws which were passed by the States, in their colonial and independent character, upon this subject, is startling at once to our morals, to our patriotism, and to our sense of justice. Not only was paper money issued and declared to be a tender in payment of debts, but laws of another character, well known under the appellation of tender laws, appraisement laws, instalment laws, and suspension laws, were from time to time enacted, which prostrated all private credit and all private morals. By some of these laws the due payment of debts was suspended; debts were, in violation of the very terms of the contract, authorized to be paid by instalments at different periods; property of any sort, however worthless, either real or personal, might be tendered by the debtor in payment of his debts; and the creditor

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was compelled to take the property of the debtor, which he might seize on execution, at an appraisement wholly disproportionate to its known value. Such grievances and oppressions, and others of a like nature, were the ordinary results of legislation during the Revolutionary War and the intermediate period down to the formation of the Constitution. They entailed the most enormous evils on the country, and introduced a system of fraud, chicanery, and profligacy which destroyed all private confidence and all industry and enterprise" (2 Story on the Constitution, § 1371).

To put an end to this vicious system of legislation which only encouraged fraud, thus graphically described by Story, the clauses which forbid the States from emitting bills of credit or making anything but gold and silver a tender in payment of debts, or passing any law impairing the obligation of contracts, were inserted in the Constitution.

"The attention of the convention, therefore," says Chief Justice Marshall, "was particularly directed to paper money and to acts which enabled the debtor to discharge his debt otherwise than was stipulated in the contract. Had nothing more been intended, nothing more would have been expressed, but in the opinion of the convention much more remained to be done. The same mischief might be effected by other means. To restore public confidence completely, it was necessary, not only to prohibit the use of particular means by which it might be effected, but to prohibit the use of any means by which the same mischief might be produced. The convention appears to have intended to establish a great principle, that contracts should be inviolable" (Sturges *vs.* Crowninshield, 4 Wheat., 122, 206).

It would be difficult to believe, even in the absence of the historical evidence we have on the subject, that the framers of the Constitution, profoundly impressed by the evils resulting from this kind of legislation, ever intended that the new Government, ordained to establish justice, should possess the power of making its bills a legal tender, which they were unwilling should remain with the States, and which in the past had

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proved so dangerous to the peace of the community, so disturbing to the business of the people, and so destructive of their morality.

The great historian of our country has recently given to the world a history of the convention, the result of years of labor in the examination of all public documents relating to its formation, and of the recorded opinions of its framers; and thus he writes:

"With the full recollection of the need or seeming need of paper money in the Revolution, with the menace of danger in future time of war from its prohibition, authority to issue bills of credit that should be legal tender was refused to the general Government by the vote of nine States against New Jersey and Maryland. It was Madison who decided the vote of Virginia, and he has left his testimony that 'the pretext for a paper currency, and particularly for making the bills a tender, either for public or private debts, was cut off.' This is the interpretation of the clause made at the time of its adoption, alike by its authors and by its opponents, accepted by all the statesmen of that age, not open to dispute because too clear for argument, and never disputed so long as any one man who took part in framing the Constitution remained alive. History cannot name a man who has gained enduring honor by causing the issue of paper money. Wherever such paper has been employed it has in every case thrown upon its authors the burden of exculpation under the plea of pressing necessity" (Bancroft's History of the Formation of the Constitution, vol. 2, 134).

And when the convention came to the prohibition upon the States, the historian says that the clause, "No State shall make anything but gold and silver a tender in payment of debts," was accepted without a dissentient State. "So the adoption of the Constitution," he adds, "is to be the end forever of paper money, whether issued by the several States or by the United States, if the Constitution shall be rightly interpreted and honestly obeyed" (id., 137).

For nearly three-fourths of a century after the adoption of

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the Constitution, and until the legislation during the recent civil war, no jurist and no statesman of any position in the country ever pretended that a power to impart the quality of legal tender to its notes was vested in the general Government. There is no recorded word of even one in favor of its possessing the power. All conceded, as an axiom of constitutional law, that the power did not exist.

Mr. Webster, from his first entrance into public life in 1812, gave great consideration to the subject of the currency, and in an elaborate speech on that subject, made in the Senate in 1836, then sitting in this room, he said: "Currency, in a large and perhaps just sense, includes not only gold and silver and bank bills, but bills of exchange also. It may include all that adjusts exchanges and settles balances in the operations of trade and business; but if we understand by currency the legal money of the country, and that which constitutes a legal tender for debts, and is the standard measure of value, then undoubtedly nothing is included but gold and silver. Most unquestionably there is no legal tender, and there can be no legal tender in this country, under the authority of this Government or any other, but gold and silver, either the coinage of our own mints or foreign coins at rates regulated by Congress. This is a constitutional principle, perfectly plain and of the highest importance. The States are expressly prohibited from making anything but gold and silver a legal tender in payment of debts, and although no such express prohibition is applied to Congress, yet, as Congress has no power granted to it in this respect but to coin money and to regulate the value of foreign coins, it clearly has no power to substitute paper or anything else for coin as a tender in payment of debts and in discharge of contracts. Congress has exercised this power fully in both its branches; it has coined money, and still coins it; it has regulated the value of foreign coins, and still regulates their value. The legal tender, therefore, the constitutional standard of value, is established and cannot be overthrown. To overthrow it would shake the whole system" (4 Webster's Works, 271).

When the idea of imparting the legal tender quality to the

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notes of the United States issued under the first act of 1862 was first broached, the advocates of the measure rested their support of it on the ground that it was a war measure, to which the country was compelled to resort by the exigencies of its condition, being then sorely pressed by the Confederate forces, and requiring the daily expenditure of enormous sums to maintain its army and navy and to carry on the Government. The Representative who introduced the bill in the House declared that it was a measure of that nature, "one of necessity and not of choice;" that the times were extraordinary and that extraordinary measures must be resorted to in order to save our Government and preserve our nationality (speech of Spaulding, of New York, *Cong. Globe*, 1861–62, Part 1, 523). Other members of the House frankly confessed their doubt as to its constitutionality, but yielded their support of it under the pressure of this supposed necessity.

In the Senate also the measure was pressed for the same reasons. When the act was reported by the Committee on Finance, its chairman, while opposing the legal tender provision, said: "It is put on the ground of absolute, overwhelming necessity; that the Government has now arrived at that point when it must have funds, and those funds are not to be obtained from ordinary sources, or from any of the expedients to which we have heretofore had recourse, and therefore, this new, anomalous, and remarkable provision must be resorted to in order to enable the Government to pay off the debt that it now owes and afford circulation which will be available for other purposes" (*Cong. Globe*, 1861–62, Part 1, 764).

And upon that ground the provision was adopted, some of the Senators stating that in the exigency then existing money must be had, and they, therefore, sustained the measure, although they apprehended danger from the experiment. "The medicine of the Constitution," said Senator Sumner, "must not become its daily food" (id., 800). A similar necessity was urged upon the State tribunals and this court in justification of the measure, when its validity was questioned. The dissenting opinion in Hepburn *vs.* Griswold referred to the pressure

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that was upon the Government at the time to enable it to raise and support an army and to provide and maintain a navy. Chief Justice Chase, who gave the prevailing opinion in that case, also spoke of the existence of the feeling when the bill was passed that the provision was necessary. He favored the provision on that ground when Secretary of the Treasury, although he had come to that conclusion with reluctance, and recommended its adoption by Congress. When the question as to its validity reached this court, this expression of favor was referred to, and by many it was supposed that it would control his judicial action. But after long pondering upon the subject, after listening to repeated arguments by able counsel, he decided against the constitutionality of the provision; and, holding in his hands the casting vote, he determined the judgment of the court. He preferred to preserve his integrity as a judicial officer rather than his consistency as a statesman. In his opinion he thus referred to his previous views:

"It is not surprising that amid the tumult of the late civil war, and under the influence of apprehensions for the safety of the Republic almost universal, different views, never before entertained by American statesmen or jurists, were adopted by many. The time was not favorable to considerate reflection upon the constitutional limits of legislative or executive authority. If power was assumed from patriotic motives, the assumption found ready justification in patriotic hearts. Many who doubted yielded their doubts; many who did not doubt were silent. Some who were strongly averse to making government notes a legal tender felt themselves constrained to acquiesce in the views of the advocates of the measure. Not a few who then insisted upon its necessity, or acquiesced in that view, have, since the return of peace, and under the influence of the calmer time, reconsidered their conclusions, and now concur in those which we have just announced. These conclusions seem to us to be fully sanctioned by the letter and spirit of the Constitution" (8 Wall., 625).

It must be evident, however, upon reflection, that if there were any power in the Government of the United States to

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impart the quality of legal tender to its promissory notes, it was for Congress to determine when the necessity for its exercise existed; that war merely increased the urgency for money; it did not add to the powers of the Government nor change their nature; that if the power existed it might be equally exercised when a loan was made to meet ordinary expenses in time of peace as when vast sums were needed to support an army or a navy in time of war. The wants of the Government could never be the measure of its powers. But in the excitement and apprehensions of the war these considerations were unheeded; the measure was passed as one of overruling necessity in a perilous crisis of the country. Now, it is no longer advocated as one of necessity, but as one that may be adopted at any time. Never before was it contended by any jurist or commentator on the Constitution that the Government, in full receipt of ample income, with a treasury overflowing, with more money on hand than it knows what to do with, could issue paper money as a legal tender. What was, in 1862, called the "medicine of the Constitution," has now become its daily bread. So it always happens that whenever a wrong principle of conduct, political or personal, is adopted on a plea of necessity, it will be afterward followed on a plea of convenience.

The advocates of the measure have not been consistent in the designation of the power upon which they have supported its validity, some placing it on the power to borrow money, some on the coining power, and some have claimed it as an incident to the general powers of the Government. In the present case it is placed by the court upon the power to borrow money, and the alleged sovereignty of the United States over the currency. It is assumed that this power, when exercised by the Government, is something different from what it is when exercised by corporations or individuals, and that the Government has, by the legal tender provision, the power to enforce loans of money because the sovereign governments of European countries have claimed and exercised such power.

"The words to borrow money," says the court, "are not to receive that limited and restricted interpretation and meaning

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which they would have in a penal statute or in an authority conferred by law or by contract upon trustees or agents for private purposes." And it adds that "the power, as incident to the power of borrowing money and issuing bills or notes of the Government for money borrowed, of impressing upon those bills or notes the quality of being a legal tender for the payment of private debts, was a power universally understood to belong to sovereignty, in Europe and America, at the time of the framing and adoption of the Constitution of the United States. The governments of Europe, acting through the monarch or the legislature, according to the distribution of powers under their respective constitutions, had and have as sovereign a power of issuing paper money as of stamping coin," and that "the exercise of this power not being prohibited to Congress by the Constitution, it is included in the power expressly granted to borrow money on the credit of the United States."

As to the terms *to borrow money*, where, I would ask, does the court find any authority for giving to them a different interpretation in the Constitution from what they receive when used in other instruments, as in the charters of municipal bodies or of private corporations, or in the contracts of individuals? They are not ambiguous; they have a well-settled meaning in other instruments. If the court may change that in the Constitution, so it may the meaning of all other clauses, and the powers which the Government may exercise will be found declared, not by plain words in the organic law, but by words of a new significance resting in the minds of the judges. Until some authority beyond the alleged claim and practice of the sovereign governments of Europe be produced, I must believe that the terms have the same meaning in all instruments wherever they are used; that they mean a power only to contract for a loan of money, upon considerations to be agreed between the parties. The conditions of the loan, or whether any particular security shall be given to the lender, are matters of arrangement between the parties; they do not concern any one else. They do not imply that the borrower can give to his promise to refund the money any security to the lender outside of property

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or rights which he possesses. The transaction is completed when the lender parts with his money and the borrower gives his promise to pay at the time, and in the manner, and with the securities agreed upon. Whatever stipulations may be made to add to the value of the promise or to secure its fulfilment, must necessarily be limited to the property, rights, and privileges which the borrower possesses. Whether he can add to his promises any element which will induce others to receive them beyond the security which he gives for their payment, depends upon his power to control such element. If he has a right to put a limitation upon the use of other persons' property, or to enforce an exaction of some benefit from them, he may give such privilege to the lender; but if he has no right thus to interfere with the property or possessions of others, of course he can give none. It will hardly be pretended that the Government of the United States has any power to enter into an engagement that, as security for its notes, the lender shall have special privileges with respect to the visible property of others, shall be able to occupy a portion of their lands or their houses, and thus interfere with the possession and use of their property. If the Government cannot do that, how can it step in and say, as a condition of loaning money, that the lender shall have a right to interfere with contracts between private parties? A large proportion of the property of the world exists in contracts, and the Government has no more right to deprive one of their value by legislation operating directly upon them, than it has a right to deprive one of the value of any visible and tangible property. No one, I think, will pretend that individuals or corporations possess the power to impart to their evidences of indebtedness any quality by which the holder will be able to affect the contracts of other parties, strangers to the loan; nor would any one pretend that Congress possesses the power to impart any such quality to the notes of the United States, except from the clause authorizing it to make laws necessary and proper to the execution of its powers. That clause, however, does not enlarge the expressly designated powers; it merely states what Congress could have done with-

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out its insertion in the Constitution. Without it Congress could have adopted any appropriate means to borrow; but that can only be appropriate for that purpose which has some relation of fitness to the end, which has respect to the terms essential to the contract, or to the securities which the borrower may furnish for the repayment of the loan. The quality of legal tender does not touch the terms of the contract; that is complete without it; nor does it stand as a security for the loan, for a security is a thing pledged over which the borrower has some control, or in which he holds some interest.

The argument presented by the advocates of legal tender is, in substance, this: The object of borrowing is to raise funds; the addition of the quality of legal tender to the notes of the Government will induce parties to take them, and funds will thereby be more readily loaned. But the same thing may be said of the addition of any other quality which would give to the holder of the notes some advantage over the property of others, as, for instance, that the notes should serve as a pass on the public conveyances of the country, or as a ticket to places of amusement, or should exempt his property from State and municipal taxation, or entitle him to the free use of the telegraph lines, or to a percentage from the revenues of private corporations. The same consequence, a ready acceptance of the notes, would follow; and yet no one would pretend that the addition of privileges of this kind with respect to the property of others, over which the borrower has no control, would be in any sense an appropriate measure to the execution of the power to borrow.

Undoubtedly the power to borrow includes the power to give evidences of the loan in bonds, treasury notes, or in such other form as may be agreed between the parties. These may be issued in such amounts as will fit them for circulation, and for that purpose may be made payable to bearer, and transferable by delivery. Experience has shown that the form best fitted to secure their ready acceptance is that of notes payable to bearer in such amounts as may suit the ability of the lender. The Government, in substance, says to parties with whom it deals:

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Lend us your money, or furnish us with your products or your labor, and we will ultimately pay you, and as evidence of it we will give you our notes, in such form and amount as may suit your convenience, and enable you to transfer them; we will also receive them for certain demands due to us. In all this matter there is only a dealing between the Government and the individuals who trust it. The transaction concerns no others. The power which authorizes it is a very different one from a power to deal between parties to private contracts in which the Government is not interested, and to compel the receipt of these promises to pay in place of the money for which the contracts stipulated. This latter power is not an incident to the former; it is a distinct and far greater power. There is no legal connection between the two; between the power to borrow from those willing to lend and the power to interfere with the independent contracts of others. The possession of this latter power would justify the interference of the Government with any rights of property of other parties, under the pretence that its allowance to the holders of the notes would lead to their more ready acceptance, and thus furnish the needed means.

The power vested in Congress to coin money does not in my judgment fortify the position of the court as its opinion affirms. So far from deducing from that power any authority to impress the notes of the Government with the quality of legal tender, its existence seems to me inconsistent with a power to make anything but coin a legal tender. The meaning of the terms "to coin money" is not at all doubtful. It is to mould metallic substances into forms convenient for circulation and to stamp them with the impress of the Government authority indicating their value with reference to the unit of value established by law. Coins are pieces of metal of definite weight and value, stamped such by the authority of the Government. If any doubt could exist that the power has reference to metallic substances only it would be removed by the language which immediately follows, authorizing Congress to regulate the value of money thus coined and of foreign coin, and also by clauses

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making a distinction between coin and the obligations of the general Government and of the States. Thus, in the clause authorizing Congress "to provide for the punishment of counterfeiting the securities and current coin of the United States," a distinction is made between the obligations and the coin of the Government.

Money is not only a medium of exchange, but it is a standard of value. Nothing can be such standard which has not intrinsic value, or which is subject to frequent changes in value. From the earliest period in the history of civilized nations, we find pieces of gold and silver used as money. These metals are scattered over the world in small quantities; they are susceptible of division, capable of easy impression, have more value in proportion to weight and size, and are less subject to loss by wear and abrasion than any other material possessing these qualities. It requires labor to obtain them; they are not dependent upon legislation or the caprices of the multitude; they cannot be manufactured or decreed into existence, and they do not perish by lapse of time. They have, therefore, naturally, if not necessarily, become throughout the world a standard of value. In exchange for pieces of them, products requiring an equal amount of labor are readily given. When the product and the piece of metal represent the same labor, or an approximation to it, they are freely exchanged. There can be no adequate substitute for these metals. Says Mr. Webster, in a speech made in the House of Representatives in 1815:

"The circulating medium of a commercial community must be that which is also the circulating medium of other commercial communities, or must be capable of being converted into that medium without loss. It must also be able, not only to pass in payments and receipts among individuals of the same society and nation, but to adjust and discharge the balance of exchanges between different nations. It must be something which has a value abroad as well as at home, by which foreign as well as domestic debts can be satisfied. The precious metals alone answer these purposes. They alone, therefore, are money, and whatever else is to perform the functions of

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money must be their representative, and capable of being turned into them at will. So long as bank paper retains this quality it is a substitute for money; divested of this, nothing can give it that character" (3 Webster's Works, 41).

The clause to coin money must be read in connection with the prohibition upon the States to make anything but gold and silver coin a tender in payment of debts. The two taken together clearly show that the coins to be fabricated under the authority of the general Government, and as such to be a legal tender for debts, are to be composed principally, if not entirely, of the metals of gold and silver. Coins of such metals are necessarily a legal tender to the amount of their respective values without any legislative enactment, and the statute of the United States providing that they shall be such tender is only declaratory of their effect when offered in payment. When the Constitution says, therefore, that Congress shall have the power to coin money, interpreting that clause with the prohibition upon the States, it says it shall have the power to make coins of the precious metals a legal tender, for that alone which is money can be a legal tender. If this be the true import of the language, nothing else can be made a legal tender. We all know that the value of the notes of the Government in the market, and in the commercial world generally, depends upon their convertibility on demand into coin; and as confidence in such convertibility increases or diminishes, so does the exchangeable value of the notes vary. So far from becoming themselves standards of value by reason of the legislative declaration to that effect, their own value is measured by the facility with which they can be exchanged into that which alone is regarded as money by the commercial world. They are promises of money, but they are not money in the sense of the Constitution. The term money is used in that instrument in several clauses; in the one authorizing Congress "to borrow money;" in the one authorizing Congress "to coin money;" in the one declaring that "no money" shall be drawn from the treasury but in consequence of appropriations made by law; and in the one declaring that no State shall "coin money."

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And it is a settled rule of interpretation that the same term occurring in different parts of the same instrument shall be taken in the same sense, unless there be something in the context indicating that a different meaning was intended. Now, to coin money is, as I have said, to make coins out of metallic substances, and the only money the value of which Congress can regulate is coined money, either of our mints or of foreign countries. It should seem, therefore, that to borrow money is to obtain a loan of coined money, that is, money composed of the precious metals, representing value in the purchase of property and payment of debts. Between the promises of the Government, designated as its securities, and this money, the Constitution draws a distinction, which disappears in the opinion of the court.

The opinion not only declares that it is in the power of Congress to make the notes of the Government a legal tender and a standard of value, but that under the power to coin money and regulate the value thereof, Congress may issue coins of the same denominations as those now already current, but of less intrinsic value, by reason of containing a less weight of the precious metals, and thereby enable debtors to discharge their debts by payment of coins of less real value. This doctrine is put forth as in some way a justification of the legislation authorizing the tender of nominal money in place of real money in payment of debts. Undoubtedly Congress has power to alter the value of coins issued, either by increasing or diminishing the alloy they contain; so it may alter, at its pleasure, their denominations; it may hereafter call a dollar an eagle, and it may call an eagle a dollar. But if it be intended to assert that Congress can make the coins changed the equivalent of those having a greater value in their previous condition, and compel parties contracting for the latter to receive coins with diminished value, I must be permitted to deny any such authority. Any such declaration on its part would be not only utterly inoperative in fact, but a shameful disregard of its constitutional duty. As I said on a former occasion: "The power to coin money, as declared by this court, is a great trust devolved upon Con-

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gress, carrying with it the duty of creating and maintaining a uniform standard of value throughout the Union, and it would be a manifest abuse of this trust to give to the coins issued by its authority any other than their real value. By debasing the coins, when once the standard is fixed, is meant giving to the coins, by their form and impress, a certificate of their having a relation to that standard different from that which, in truth, they possess; in other words, giving to the coins a false certificate of their value. Arbitrary and profligate governments have often resorted to this miserable scheme of robbery, which Mill designates as a shallow and impudent artifice, the 'least covert of all modes of knavery, which consists in calling a shilling a pound, that a debt of one hundred pounds may be cancelled by the payment of one hundred shillings.'" No such debasement has ever been attempted in this country, and none ever will be so long as any sentiment of honor influences the governing power of the nation. The changes from time to time in the quantity of alloy in the different coins have been made to preserve the proper relative value between gold and silver, or to prevent exportation, and not with a view of debasing them. Whatever power may be vested in the Government of the United States, it has none to perpetrate such monstrous iniquity. One of the great purposes of its creation, as expressed in the preamble of the Constitution, was the establishment of justice, and not a line nor a word is found in that instrument which sanctions any intentional wrong to the citizen, either in war or in peace.

But beyond and above all the objections which I have stated to the decision recognizing a power in Congress to impart the legal-tender quality to the notes of the Government, is my objection to the rule of construction adopted by the court to reach its conclusions, a rule which, fully carried out, would change the whole nature of our Constitution and break down the barriers which separate a government of limited from one of unlimited powers. When the Constitution came before the conventions of the several States for adoption, apprehension existed that other powers than those designated might be claimed; and it led to the first ten amendments. When these

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were presented to the States they were preceded by a preamble stating that the conventions of a number of the States had, at the time of adopting the Constitution, expressed a desire, "in order to prevent misconception or abuse of its powers, that further declaratory and restrictive clauses should be added." One of them is found in the tenth amendment, which declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The framers of the Constitution, as I have said, were profoundly impressed with the evils which had resulted from the vicious legislation of the States making notes a legal tender, and they determined that such a power should not exist any longer. They therefore prohibited the States from exercising it, and they refused to grant it to the new government which they created. Of what purpose is it, then, to refer to the exercise of the power by the absolute or the limited governments of Europe, or by the States previous to our Constitution? Congress can exercise no power by virtue of any supposed inherent sovereignty in the general Government. Indeed, it may be doubted whether the power can be correctly said to appertain to sovereignty in any proper sense as an attribute of an independent political community. The power to commit violence, perpetrate injustice, take private property by force without compensation to the owner, and compel the receipt of promises to pay in place of money, may be exercised, as it often has been, by irresponsible authority, but it cannot be considered as belonging to a government founded upon law. But be that as it may, there is no such thing as a power of inherent sovereignty in the Government of the United States. It is a government of delegated powers, supreme within its prescribed sphere, but powerless outside of it. In this country sovereignty resides in the people, and Congress can exercise no power which they have not, by their Constitution, entrusted to it; all else is withheld. It seems, however, to be supposed that, as the power was taken from the States, it could not have been intended that it should disappear entirely, and therefore it must in some way adhere to

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the general Government, notwithstanding the tenth amendment and the nature of the Constitution. The doctrine, that a power not expressly forbidden may be exercised, would, as I have observed, change the character of our Government. If I have read the Constitution aright, if there is any weight to be given to the uniform teachings of our great jurists and of commentators previous to the late civil war, the true doctrine is the very opposite of this. If the power is not in terms granted, and is not necessary and proper for the exercise of a power which is thus granted, it does not exist. And in determining what measures may be adopted in executing the powers granted, Chief-Justice Marshall declares that they must be appropriate, plainly adapted to the end, not prohibited, and *consistent with the letter and spirit of the Constitution.* Now, all through that instrument we find limitations upon the power, both of the general Government and the State Governments, so as to prevent oppression and injustice. No legislation, therefore, tending to promote either can consist with the letter and spirit of the Constitution. A law which interferes with the contracts of others and compels one of the parties to receive in satisfaction something different from that stipulated, without reference to its actual value in the market, necessarily works such injustice and wrong.

There is, it is true, no provision in the Constitution of the United States forbidding in direct terms the passing of laws by Congress impairing the obligation of contracts, and there are many express powers conferred, such as the power to declare war, levy duties, and regulate commerce, the exercise of which affects more or less the value of contracts. Thus war necessarily suspends intercourse between citizens or subjects of belligerent nations, and the performance during its continuance of previous contracts. The imposition of duties upon goods may affect the prices of articles imported or manufactured, so as to materially alter the value of previous contracts respecting them. But these incidental consequences arising from the exercise of such powers were contemplated in the grant of them. As there can be no solid objection to legislation under them, no just complaint can be made of such con-

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sequences. But far different is the case when the impairment of the contract does not follow incidentally, but is directly and in terms allowed and enacted. Legislation operating directly upon private contracts, changing their conditions, is forbidden to the States; and no power to alter the stipulations of such contracts by direct legislation is conferred upon Congress. There are also many considerations, outside of the fact that there is no grant of the power, which show that the framers of the Constitution never intended that such power should be exercised. One of the great objects of the Constitution, as already observed, was to establish justice, and what was meant by that in its relations to contracts, as said by the late Chief Justice in his opinion in Hepburn *vs.* Griswold, was not left to inference or conjecture. And in support of this statement he refers to the fact that when the Constitution was undergoing discussion in the convention, the Congress of the Confederation was engaged in framing the ordinance for the government of the Northwest Territory, in which certain articles of compact were established between the people of the original States and the people of the Territory for the purpose, as expressed in the instrument, "of extending the fundamental principles of civil and religious liberty, whereon these republics [the States united under the confederation], their laws and constitutions are erected." That Congress was also alive to the evils which the loose legislation of the States had created by interfering with the obligation of private contracts and making notes a legal tender for debts; and the ordinance declared that in the just preservation of rights and property no law "ought ever to be made, or have force in the said Territory, that shall in any manner whatever interfere with or affect private contracts, or engagements, *bona fide* and without fraud, previously formed." This principle, said the Chief Justice, found more condensed expression in the prohibition upon the States against impairing the obligation of contracts, which has always been recognized "as an efficient safeguard against injustice;" and the court was then of opinion that "it is clear that those who framed and those who adopted the Constitution intended that

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the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency." Soon after the Constitution was adopted the case of Calder *vs.* Bull came before this court, and it was there said that there were acts which the Federal and State legislatures could not do without exceeding their authority; and among them was mentioned a law which punished a citizen for an innocent act, and a law which destroyed or impaired the lawful private contracts of citizens. "It is against all reason and justice," it was added, "for a people to entrust a legislature with such powers, and, therefore, it cannot be presumed that they have done it" (3 Dallas, 388). And Mr. Madison, in one of the articles in the *Federalist*, declared that laws impairing the obligation of contracts were contrary to the first principles of the social compact, and to every principle of sound legislation. Yet this court holds that a measure directly operating upon and necessarily impairing private contracts, may be adopted in the execution of powers specifically granted for other purposes, because it is not in terms prohibited, and that it is consistent with the letter and spirit of the Constitution.

From the decision of the court I see only evil likely to follow. There have been times within the memory of all of us when the legal-tender notes of the United States were not exchangeable for more than one-half of their nominal value. The possibility of such depreciation will always attend paper money. This inborn infirmity no mere legislative declaration can cure. If Congress has the power to make the notes a legal tender and to pass as money or its equivalent, why should not a sufficient amount be issued to pay the bonds of the United States as they mature? Why pay interest on the millions of dollars of bonds now due, when Congress can in one day make the money to pay the principal? And why should there be any restraint upon unlimited appropriations by the Government for all imaginary schemes of public improvement, if the printing-press can furnish the money that is needed for them?

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E PLURIBUS
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Pay
Except
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UNITED STATES
Promise to pay
One Hundred
Dollars to the
order of
with interest at
per annum.
100
WASHINGTON.
Dec.r 1847
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Register of the U.S. Treasury.
Treasurer of the United States
$100.
PRINCIPAL FUNDABLE AT THE OPTION OF THE HOLDER, IN UNITED STATES SIX
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